the ward's share of joint income;

c. Expenses incurred on behalf of the ward (including the ward's proportionate share of household expenses if the ward and spouse reside in the same household) without regard to the provisions of Ch. 766.

d. Total assets of the ward at the end of the year as determined under Ch. 766.

e. The account shall be signed by both the guardian and the spouse.

Notice of Waiver of Annual Account or Modified Annual Account shall be given to the adult children of the ward.

(5) EXAMINATION OF ACCOUNTS. The account shall be examined as directed by the court. If it is not satisfactory the court shall make such order thereon as justice requires. Notice to the guardian may be served personally or by certified mail as the court directs. When the examination of a guardian's account is upon notice a guardian ad litem of the ward may be appointed.

(6) NOTICE OF FINAL ACTION ON ACCOUNTS. No action by the court upon any account shall be final unless it is upon notice as the court may direct.

(7) ACCOUNTING BY THIRD PARTIES TO GUARDIAN. The court, upon the application of any guardian appointed by it may order any person who has been entrusted by the guardian with any part of the estate of a decedent or ward to appear before the court, and may require the person to render a full account, on oath, of any property or papers belonging to the estate which have come to the person's possession and of his or her proceedings thereon. If the person refuses to appear and render an account the court may proceed against him or her as for contempt.

Section Three--Review and Termination of Guardianships.

(1) DURATION. Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the incompetent, or until terminated by the court.

(2) REVIEW AND MODIFICATION. A ward who is 18 years of age or older, any interested person acting on the ward's behalf, or the ward's guardian may petition for a review of incompetency.

(a) Upon such a petition for review, the court shall:

(1) Appoint a guardian ad litem;

(2) Fix a time and place for hearing;

(3) Designate those persons who are entitled to notice of hearing and how notice shall be given of such hearing;

(4) Conduct a hearing at which the ward shall be present and shall have the right to a jury trial, if demanded.

(5) The ward shall also have the right to counsel and the court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent, counsel shall be provided at the expense of the county having jurisdiction of the guardianship.

(b). After the hearing provided above, the court may terminate or modify the guardianship.

(c) Notwithstanding any finding of incompetence, a ward may retain and contract for the payment of reasonable fees to an attorney in connection with proceedings involving review of the terms and conditions of the guardianship, including the question of incompetence, whether or not the ward is successful in such proceeding.

(3) TERMINATION OF GUARDIANSHIP OF THE PERSON. A guardianship of the person shall terminate:

(a) When the court adjudicates a former incompetent to be competent.

(b) When the ward moves out of this state and a guardian is appointed in the state to which the ward has moved.

(4) TERMINATION OF GUARDIANSHIP OF THE ESTATE. A guardianship of the estate shall terminate:

(a) When the court adjudicates a former incompetent to be competent.

(b) When a ward dies (unless the estate can be settled as provided by s. _____).

(c) When the ward moves out of this state and a guardian is appointed in the state to which the ward has moved.

(5) DEPLETED GUARDIANSHIPS. When the court determines that the estate of the ward is

below $5,000 and reduced to a point where it is to the advantage of the ward to dispense with the formalities of guardianship, the court may do one of the following:

(a) Terminate the guardianship and authorize disposition of the remaining assets as provided by s. _____. The court, as a part of the disposition, may order the guardian to make appropriate financial arrangements for the burial or other disposition of the remains of the ward.

(b) Keep the guardianship, but waive bond and accounting.

Section Four--Final Accounts.

(1) RENDER FINAL ACCOUNT. Upon termination of a guardianship, or upon resignation, removal or death of a guardian, such guardian or the guardian's personal representative shall forthwith render the guardian's final account to the court and to the former ward, the successor guardian or the deceased ward's personal representative as the case may be.

(2) SMALL ESTATES. The guardian of a small estate as Sec. ___ shall not be required to file a final account unless otherwise ordered by the court. Instead, the guardian shall simply list the ward's assets remaining at the time the guardianship is terminated (including at the death of the ward).

(3) DISCHARGE. Upon approval of the account and filing proper receipts the guardian shall be discharged and the guardian's bond released.

(4) SUMMARY SETTLEMENT OF SMALL ESTATES. When a ward dies leaving an estate which can be settled summarily under s. 867.01, the court may approve such settlement and distribution by the guardian, without the necessity of appointing a personal representative.

Section Five--Review of Conduct of Guardian.

(1) CONTINUING JURISDICTION OF COURT. The court which appointed the guardian shall have continuing jurisdiction over the guardian.

(2) REMEDIES OF COURT. Upon the petition of any party, including the ward, and a finding of cause as set forth in subd. ___below the Court may, in its discretion, do any of the following:

(a). Order the guardian to file an inventory or any other report or account required of the guardian;

(b). Require the guardian to reimburse the estate of the ward for losses incurred by the guardian's breach of any duty to the ward;

(c) Impose a financial penalty on the guardian including a denial of compensation requested by the guardian;

(d) Remove the guardian; or

(e) Enter any other order that may be necessary or appropriate to compel the guardian to act in the best interests of the ward or to otherwise carry out the guardian's duties and enforce such order by civil contempt.

(3) CAUSE FOR COURT ACTION AGAINST THE GUARDIAN.

(a). Failing to timely file a true, correct and complete required inventory or account;

(b) Committing graud, waste or mismanagement in connection with the ward's estate;

(c) Engaging in self-dealing regarding the ward's estate;

(d) Failing to adequately provide for the personal needs of the ward out of the available assets of the ward's estate and available public benefits;

(e) Failing to exercise due diligence and reasonable care in assuring that the ward's personal needs are being met in the least restrictive environment consistent with the ward's needs and functional capacities;

(f) Failing to carry out the duties of a guardian as specified in Secs. ____ and ____ of this chapter.

(4) REMOVAL OF PAID GUARDIANS. The court may remove a corporate or other paid guardian where new circumstances have arisen indicating that a previously unavailable volunteer guardian is now available to serve, and that the change would be in the ward's best interests.

(5) FEES AND COSTS IN PROCEEDINGS INVOLVING THE GUARDIAN.

(a) The court may require the guardian to pay personally any costs of proceedings, including costs of service and attorneys fees, or any other penalties the court determines are appropriate.

(b) Notwithstanding any finding of incompetence, a ward may retain an attorney and contract for the payment of fees to such attorney in connection with proceedings involving the guardian, whether or not the guardian consents and whether or not the ward is successful in such proceeding.

Section Six--Duties of Guardian Ad Litem in Annual Watts Reviews. In any review of a

protective placement under s. 55.06 or of a protective service order under s. 55.05, the guardian ad litem shall do all of the following:

(1) Interview the ward to explain the review procedure, the right to an independent evaluation, the right to counsel and the right to a hearing.

(2) Provide the information under par. (1) to the ward in writing.

(3) Secure an additional evaluation of the ward, if necessary.

(4) Review the annual report and relevant reports on the ward's condition and placement.

(5) Review the ward's condition, placement and rights with the guardian.

(6) Provide a summary written report to the court.

(7) If relevant, report to the court that the ward objects to the finding of continuing incompetency, the present or proposed placement, the position of the guardian or the recommendation of the guardian ad litem as to the best interests of the ward or if there is ambiguity about the ward's position on these matters.

(8) If relevant, report to the court that the ward requests the appointment of counsel or an adversary hearing.

Section Seven--Compensation of Guardians of Person and Estate

(1) In General. Guardians of the Person and Guardians of the Estate shall be entitled to compensation and reimbursement for expenses upon the following terms and conditions.

(2) Compensation. Subject to the approval of the court, a guardian shall be entitled to reasonable compensation for the guardian's services. The court shall use the following factors to decide whether guardian compensation is just and reasonable: reasonableness of services; fair market value of services; necessity of services; conflict of interest of the guardian; availability of others to provide the services; amount of ward's estate; need for the services; and hourly rate for the services. The amount of the fees may be determined on an hourly basis or a monthly stipend, or any other basis that the court deems reasonable under the circumstances. The court may, but shall not be required to establish the amount or basis for computing the guardian's fees at the time of initial appointment.

(3) Reimbursement of Expenses. The guardian shall be reimbursement of the amount of the guardian's reasonable expenses incurred in the execution of the guardian's trust including necessary compensation paid to attorneys, accountants, brokers and other agents and servants.

(4) Court Approval. Court approval must be obtained before payment of fees and expenses to the guardian, but need not be obtained before the charges are incurred.

Section Eight--Compensation of Guardians ad Litem. On order of the court, the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue, unless the court otherwise directs. If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08 (4m)(b). The guardian ad litem shall be paid for performing all duties required of the guardian ad litem under this chapter and for any other acts approved by the court and reasonably necessary to promote the best interests of the ward.

Subchapter 6--Voluntary Proceedings: Conservators

Section One--Appointment of Conservators

(1) Any adult resident who believes that he or she is unable properly to manage his or her property or income may voluntarily apply to the circuit court of the county of his or her residence for appointment of a conservator of the estate. Upon receipt of the application the court shall fix a time and place for hearing the application and direct to whom and in what manner notice of the hearing shall be given.

(2) At the time of such hearing the applicant shall be personally examined and if the court is satisfied that the applicant desires a conservator and that the fiduciary nominated is suitable, the court may appoint the nominee as conservator and issue letters of conservatorship to the nominee upon the filing of a bond in the amount fixed by the court.

(3) A conservator shall have all the powers and duties of a guardian of the estate of an incompetent person.

(4) Any person whose estate is under conservatorship may apply to the court at any time for termination thereof. Upon such application, the court shall fix a time and place for hearing and direct that 10 days' notice by mail be given to the person's guardian, if any, the conservator and the presumptive heirs of the applicant. Upon such hearing, the court shall, unless it is clearly shown that the applicant is incompetent, remove the conservator and order the property restored to the applicant, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator.

(5) If the court shall upon such hearing determine that the person whose estate is administered by a conservator may be incapable of handling his or her estate, the court shall order the conservatorship continued, or if the applicant so desires and the nominee is suitable, the court

may appoint a successor conservator.

(6) Appointment of a conservator shall not be evidence of the competency or incompetency of the person whose estate is being administered.

(7) If an application for conservatorship is filed, the fee prescribed in s. 814.66 (1) (b) shall be paid at the time of the filing of the inventory or other documents setting forth the value of the estate.

(8) The conservator's powers shall cease upon being removed by the court for cause or upon appointment of a guardian for, or death of, the person whose estate is being conserved.

Insert p. 18

FEES AND COSTS OF PETITIONER. When a guardian is appointed, the court shall award reasonable costs and attorney fees to the petitioner from the ward's estate and income unless it finds that it would be inequitable to so award costs and fees, after considering: the petitioner's interest in the matter, including any conflict of interest on the part of the petitioner in pursuing the guardianship; whether the ward had executed a power of attorney or engaged in other advance planning to avoid guardianship; the ability of the ward's estate and income to pay; whether the guardianship was contested and, if so, the nature of the contest; and other factors the court deems relevant.

✓ Entered the language
? Couldn't understand what to do
X did not enter the language
* Not provided, as of 8/21/02

November 16, 2001

TO: State Bar of Wisconsin, Elder Law Section Board

CC: Jenny Boese, State Bar
Attorneys Ellen Henningsen and Helen Marks Dicks, CWAG Elder Law Center

FROM: Betsy Abramson

RE: Bar's Guardianship Reform Proposal – with Jaeger and Hughes' reactions to Wisconsin APS Modernization Sub-committee suggestions.

As I explained on October 26, the state's Department of Health and Family Services, through a joint effort of the Office of Legal Counsel and the Bureau of Aging and Long Term Care Resources, this past year has initiated a comprehensive effort entitled "Adult Protective Services Modernization Project." This is an effort to review and update Wisconsin law, practice and procedures related to situations of abuse, neglect, financial exploitation and self-neglect of the elderly and other vulnerable adults (more broadly referred to as "adults-at-risk"). The Secretary of DHFS appointed a large committee, comprised of different service providers, county departments of human/social services, county corporation counsel, advocates (aging, disability, domestic violence, sexual assault, etc.) state staff and others to guide the effort. Two DHFS staff, Jane Raymond, Advocacy and Protection Systems Developer, and Linda Dawson, Deputy Legal Counsel, are co-chairing the effort,

As part of that effort, the group is very interested is the significant efforts of our Elder Law Section, completed three years ago, to draft and put forth a proposal for reform of the guardianship statute (ch. 880, Wis. Stats.) We understand from speaking with the Legislative Reference Bureau staff that drafting is starting.

Jane Raymond has asked me to convene a sub-committee of the large Adult Protective Services Modernization Committee to review the Elder Law Section's work. Members included: Attorney Roy Froemming (Wisconsin Coalition for Advocacy, extensive experience in advocacy for people with developmental disabilities), Dane County Court Commissioner David Flesch, Milwaukee County Court Commissioner Rosemary Thornton, Sauk County Corporation Counsel Todd Liebman, Attorney Gerard Gierl (Client Rights Office Specialist at DHFS), Cathy Kehoe (Alzheimer's Service Developer at DHFS), Jane Raymond and myself.

The sub-committee's purpose was to determine if it was in agreement with all of the provisions of the Guardianship Reform Proposal and, where there were differences of opinion, to identify them and determine whether we might be able to resolve them before drafting begins. To that end, the group completed its review and offered the following suggestions to Barbara Becker in a

memo dated August 6th. Barbara Becker asked Barb Hughes and Jim Jaeger to meet with me to discuss our differences and we met twice over the last few weeks to identify areas where there was agreement about our proposed changes. The three of us got through all of our suggestions in only a few hours (and two lunches!) and are submitting for your consideration only the ones with which Jim and Barb agreed. Many of our suggestions were fairly minor and/or simply technical clarifications. Overall, the members of the sub-committee of the state DHFS's Adult Protective Services Modernization Committee was extremely pleased with the scope and content of the Guardianship Reform Proposal that the Elder Law Section put forward and recognizes the extensive work that went into it by the volunteer members of our Elder Law Section. We are eager to work together to get this drafted, introduced and passed. The drafted has started on this, so the sooner we can get her agreed-upon changes, the better chance we have of this seeing action in the winter session of the legislature.

Would December 15th work as a deadline to get me comments? Do it any way that works for you: print this out and write (clearly!) in the margins and ship it back to me, or e-mail me, or just call and discuss them all with me. Whatever is easiest (and fastest!) for you.

* * * * * * *

Page 1, Section Two. Definitions

(2) "Activities of Daily Living" – we suggest that we direct the drafter to use the same definition as is being used in the implementation of Family Care.
[They need to see it, of course]

(5) "Guardian" – remove the language "who is eighteen years of age or older" as that is more of a qualification than a definition.
[Fine.]

(6) "Incompetent" – since a major goal of this reform proposal is to urge the greater use of limited guardianships, provide separate definitions of "incompetent" as to property/financial management (resulting in a guardian of the estate) as compared to incompetent for personal decision-making (resulting in a guardian of the person).

In that same definition is included, at (b) "for reasons including, but not limited to, mental deficiency, ***physical illness or disability***, chronic mental illness, … It would seem that since in the very next section we indicated that "physical disability" (amongst other things) singly or together, without mental impairment, cannot be grounds for finding incompetence, then we shouldn't have the "physical illness or disability" in (6)(b).

Roy Froemming has offered to work through this definition a little more, considering both the definition itself, the standards for the judge in finding incompetency and its otherwise impact on various parts of both chs. 880 and 55.
[Waiting on Roy's definition and re-organizing, and will then send to all of you – and the Elder Law Section of the Bar.]

Page 2

(7) "Meeting the essential requirements for physical health and safety" – we would suggest tacking onto the end of the last sentence: "Mere old age, eccentricity…. without mental impairment, shall not be used to establish incompetence, ***unless there is a total inability to communicate***." One of our committee members pointed out that "Helen Keller, before she met Annie, would have badly needed a guardian but would not have qualified since she had physical disabilities only.

Note: is in s.54.10(3)(a)

[Replace "total" with "severe" and then they accepted it.]

(9)(a)8.

"Interested person" – need to perhaps be more general in describing that ward is receiving any long-term support type benefits, rather than the current language that only covers "medical assistance, COP or 'similar benefits,' the county dept. of human or social services."

[Fine.]

(9)(a)9.

"Interested Person" – current draft lists the "corporation counsel of the county of the proposed ward's residence. We suggest that the corporation counsel for BOTH counties (the county of [original] residence AND the county of the proposed residence) receive notice.

[Fine.]

Pages 2-3

Continuing the "interested persons":

"(b) for purposes of proceedings subsequent to the petition for guardianship or protective placement" we'd suggest adding in as a #4, the county.

[They thought this should be narrowed to when the county has a legitimate interest and therefore began by eliminating "guardianship or" and then thought we'd need other language indicating "where the county has an interest" or comparable.]

Page 3 – Subchapter 2 – Standard for Appointment of Guardian. Section One. General Provisions.

While we agree with all the concepts under (b), we think they may be in the wrong place.

-The language of (b)1, we think should be part of the definition of "incompetent."

-The first part of (b)2. ("In deciding whether the appointment is necessary, the court shall consider….") should be under (3) on page 4.

-The second sentence of (b)2. ("Any guardian appointment…shall be granted only those powers…necessary…") should be under a separate provision.

-(2)(a)-(c) (pages 3-4) should still be part of the definition of incompetent.

[Barb and Jim thought these should all remain where they have them AND be put in the language of "findings" as well.]

Page 5 – Section 2. Exceptions to Normal Guardianship Rules

Under (2) SMALL ESTATES, shouldn't the word be "incompetence," not "incapacity"?

Under (2)(e), may we change the "durable power of attorney" to "durable *financial* power of attorney"?

[Barb and Jim said their original proposal is right – and is included in current sec. 880.04(2), Stats. They pointed out that we should keep "incapacity" because minors don't have "legal capacity" and adults who are incompetent no longer have legal capacity. They think we should make the ssame changes in secs. 243.07 and 243.10, Stats.] – There already exist

The heading for (3) on page 5, according to the two probate court commissioners in our work group, should be "PROBATE" Administration, not "informal" administration. Similarly, the fourth word in the third line of that section should also be changed from "informal" to "probate."
✓ *[Again, Barb and Jim said this ws right. Existing law, sec. 880.04(2m), Stats., uses this term.]*

Pages 6-7 – (1) NOMINATION OF GUARDIANS

Section (e) appears to have two headings "Nominations by Interested Persons" and "Preference of Individuals over Corporations/Agencies." The text immediately after appears to appropriately address the second heading, but some language is needed for the first – "Nominations by Interested Persons," which would describe *how* interested persons may make a nomination for the guardian.
? ✓
[They agreed that something was missing!]

Page 7 – (3) Other Criteria for Guardian Selection

First, we suggest that the language that is now (4), beginning at the bottom of page 7, become the first of these "'other' criteria." Second, we noted that (a) and (b) are somewhat contradictory, in that (a) directs a guardian to submit this sworn and notarized statement to the court stating that he or she has not been convicted of a crime, i.e., no one could become a guardian who has been convicted of these certain crimes, but (b) says that if the proposed guardian *has* been convicted of a crime, etc., he or she must describe that in the statement – the same statement of (a) that says he or she never has been. Our suggestion is to drop both of the current proposed (3)(a) and (b) and instead direct the guardian ad litem to do a criminal background check on the proposed guardian. Under the new state system operated by the Department of Justice to conduct background checks on paid caregivers, this is now simple and quick, and costs about $3 per check.
✓ *[Barb and Jim thought the sentences should be essentially combined, with the end of the "a" paragraph, directing the guardian to submit the notarized statement, reading "stating whether or not the guardian has been conviced....."."]*

Also, we want to make sure that this section is consistent with (e) on page 25 – that is, that there should be a presumption for leaving the power of attorney (financial and/or health care) in place, but only direct that the court "give consideration" to appointing the agent as guardian, if, despite the existence of the power of attorney (financial and/or health care) the court deems it in the individual's best interest to appoint a guardian.
✓ *[They said it's fine as redrafted <u>now</u> – the burden of proof should be on the challenger to the agent being appointed as guardian.]*

Page 8 – Section Two – Duties and Powers of the Guardian in General

-Could/Should we combine (2) and (4) or is "when acting on behalf of the ward" sufficiently different from "in relation to the ward"? In any event, our group was a little scared by all the "utmost" language – felt that was a *very high* standard for guardians.

-Instead, we suggest the current sec. 880.39 language [also on page 15 under (3)] under immunities: "[A guardian is to perform] the duties in good faith, in the best interests of the ward and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs."
[(2) refers to the guardian's relationship with third persons, so it should have a "prudent person" standard.
(4) refers to the guardian's relationship to the ward him/herself, so that should retain the "utmost degree of trust, loyalty, etc."

-In same section, under (3), we suggest changing the language from: *"A guardian shall act in all proceedings as an advocate of the ward..."* to: *"A guardian shall act in all matters as an advocate for the best interests of the ward."*
[They thought this might be a problem since we are introducing a careful gifting provision here.]

We are, of course, very supportive of the concept that the guardian only exercises the rights listed as delegated in the court order, rather than the current system where all rights are presumed lost/transferred, unless expressly reserved. We are interested, however, in designing a relatively simple (e.g., not necessarily requiring counsel or a court hearing) if/when an interested person (including the guardian) believes it is time to make the guardianship more restrictive (i.e., less limited). Thus, we suggest a procedure that would permit the court to expand the original Order (Letters of Guardianship).

1. The guardian or any other interested person provides a written statement with relevant accompanying support asking the court to remove/transfer additional right(s), based on the ward's new limitation.
2. The court *may* (i.e., is not required to) appoint a guardian ad litem.
3. The court gives notice to the county department of human/social services and waits ten days.
4. If there is an objection, the ward or any other individual may bring an action.
5. If the court ultimately changes the original Order (Letters of Guardianship), it shall issue new Letters of Guardianship.

In other words, the interested person writes a letter with accompanying documentation. Then, there is some notice beforehand and if the court doesn't receive an objection within ten days, it then can make the new orders. In extraordinary circumstances, the court does not have to wait the ten days.

[They thought that #2 should be "shall," not "may" – i.e., always have a GAL. They thought #3 should end with "if there is county involvement through ap rotective placement, funding for long-term support, etc." They thought #4's language should be changed from "bring an action" to "request a hearing."]

Page 9

Under (g)(1) Claims – We suggest that the sentence end with the "if sufficient" and drop the last part ("and if not, then out of the ward's real estate upon selling the same as provided by law") and instead insert "shall use income and liquid assets first."
[They thought this should just say "...out of the ward's personal estate and income" and not prioritize at all.]

Page 12

Under (6), end that introductory language with "shall include a revocable or irrevocable trust or durable power of attorney or marital property agreement."
[Agreed.]

Page 13

In the Notice section under (9), we suggest eliminating the "in the discretion of the court" for the notice to the county corporation counsel, i.e., notice to county corp counsel should be mandatory.
[They thought that this should read: "The County Corporation Counsel if the county has an interest in the matter." (NOT, in the discretion of the court.)]

Pages 13-14

-In looking at (10) and (11), we noted that (10) lists "considerations" for the court in reviewing a petition for authority to make gifts, etc., and that (11) says that the court may only grant the application if the following findings are made. We'd like to consider combining those sections – essentially that the court may approve the petition only if it finds that the proposed gifting, etc., is consistent with all of the (10) and (11) factors.
[Disagreed. They want the considerations considered, but not necessarily "found."]
-Also, we suggest that the wording of (11)3., on page 14 be changed to:

> "The ward has ~~not~~ manifested an intention ~~in~~consistent with the performance of the act or acts for which….. of the petition."

[They disagreed, pointing out that the ward may have never done anything to indicate an intention, i.e., "was silent" and our proposal would therefore make it impossible to ever pursue this authority.]

-In that same paragraph, we also suggest making an exception for "small gifts," e.g., you don't need past practice of giving to authorize small gifts at holidays, church plate donations, etc.
[Agreed.]

-Finally, as to gifting, we suggest some general language such as "In authorizing gifting authority by the guardian, the court may identify the terms, frequency and/or amount of the gifts as well as the specific donees."
[Agreed.]

Page 16

-Grammatical/typo problem in second line of (1)(a), which we think should read,
"A guardian shall make an annual report…..and to the county department designated under sec. 55.02. The county shall develop reporting requirements…"
{Agreed.]

-Shouldn't "c" read "A guardian of the person may bind the ward or the ward's property, to carry out the powers and duties set forth in (b) [not (1) and (2)] of this section"?
[No; it's right as is (1) is Duties of Guardian of Person and (2) is Guardian of the ~~Estate~~.
Person Person

Pages 16-17 (2)

Roy and Betsy are working on both a "statement of philosophy" of sorts, describing the role of the guardian as advocate, fiduciary, etc., AND as required to attempt to advocate for services for their ward in the least restrictive environment. They also expect to put together separate listings of rights – those that can not be transferred (e.g., marriage, abortion, sterilization), those that can be lost entirely (e.g., voting, marriage) and those that can be transferred to the guardian (e.g., manage money).

[They need to see it.]

Page 17

Under (h), we suggest simply leaving that language as "Decisions on consenting to or refusing health care."

[Agreed.]

Pages 17-18

We had asked Gerard Gierl of the DHFS Client Rights Office to come up with a proposal, based on his extensive experience with secs. 49.001(6) and (8) and sec. 51.40. In discussing his draft with our sub-committee, it was clear that this is a very significant issue to counties so Todd Liebman, Sauk County Corporation Counsel and current President of the Wisconsin Association of County Corporation Counsel, agreed to ask a small group of his members to meet with Gerard and develop a proposal.

[Ok. Will wait to see it. – How's it coming Gerard?]

Pages 19-20 – Section Five – Examination of Proposed Ward

We'd like to suggest that this be broadened somewhat, using language more similar to secs. 880.33(3) and 55.06(8), [the comprehensive evaluation] Stats., which would open up the evaluations to being conducted by medical, psychological and others qualified to do service assessments, i.e., an independent social worker or case manager. We are looking here for an evaluation that will provide more of a *functional evaluation*. Also, we think there should be some language that while an "old" evaluation (i.e., one done before the filing of the petition) is permitted, the recency (date) of the examination may go to the issue of weight and sufficiency.

[Agreed.]

Page 21 – Section Seven – GAL Appointment and Duties

Under (1), we suggest ending the paragraph on "Appointment" with "or any other time the court determines" so that it is clear that a GAL may be appointed by the court in other situations, e.g., just to review the performance of a guardian.

[Agreed.]

Page 22

-Under (4) GENERAL DUTIES of the GAL, we suggest adding to (b) that the GAL is to interview the proposed guardian and the proposed stand-by guardian (if one is proposed) AND that the GAL is to report to the court on the proposed guardian and stand-by guardian's fitness to serve as guardian as well as the results of the criminal/licensing/bankruptcy background check they completed.

[Agreed.]

-Under (4)(c), we suggest adding the "right to be present at the hearing" as one of the rights the GAL should notify the proposed ward of.
-Under (4)(e), add to what the GAL should inform the court (and petitioner's attorney) of is whether or not the proposed ward wants to be at the hearing, and if the GAL recommends that the hearing be held other than in the courtroom (e.g., proposed ward's home), this notice should be provided as soon as possible.
[Agreed.]

Page 23
-Under (2) PRESENCE OF GUARDIAN – shouldn't that be the "*proposed*" guardian," both in the heading and in the actual language.
-Under (3) PRESENCE OF WARD – shouldn't that be the "*alleged incompetent*" or "*proposed* ward" rather than simply "ward"?
[They like "proposed ward," not "alleged incompetent."]
-Also under (3), second sentence should be "In making this *recommendation...*" not determination as it is the court, not the GAL who makes the actual decision. This might be the place again to reiterate that if the ward wants to be there, the GAL should so inform the court.
[No, they think it should stay as "determination" as it IS the GAL's determination as to whether or not the ward should be there.]
Page 24
-Under (5) TIME OF HEARING AND PROVISION OF REPORTS. Unfortunately, our corp counsel and court commissioner representatives think that the 60 day requirement may be very hard to meet in many counties and therefore we suggest extending it to 90 days.
[Like us, reluctantly agreed.]

Page 24 – PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS
-Under (2), our group wondered why one wouldn't just do a temporary guardianship in these situations, e.g., someone inherits $10,000 when under a representative payee. I did pose this question to Jim Jaeger (via e-mail), who responded that:

> "[i]t could be done that way as well. However, since the notion of the proposal is to tailor the remedy to the level of incapacity, this is designed for the situation where there is a limited incapacity related to a particular transaction and assistance is needed. It may be more limited in scope than a temporary guardianship. This comes from the NY statute."

-Under (3) APPOINTMENT OF GUARDIAN (a) Co-guardians. Our group felt that we should leave the statute alone – e.g., no co-guardians of the person unless they are husband and wife, and ok to have co-guardians of the estate (presumably any number?) but to not let one co-guardian's decision bind the others.
[We need to discuss this again. What should be the presumption about whether or not one co-guardian's decision can bind the other? Should we leave it as the Section wrote, making that presumption? How will health care providers know whether they need to check with one or both? How can we guard against a provider, slick salesman or someone else just going to the "easy" co-guardian and the other not even being aware of what's going on? Perhaps it would be wiser to require both co-guardians' consent unless the court directs otherwise, thereby

making sure the court really thought about it. Also, Barb and Jim think it is important that the co-guardians of the person not be limited to husband and wife.]

Page 26
Add to (5) – "Where there is a waiver of the bond under (4)(b) (page 25), the Letters of Guardianship must so state."
[They didn't see what this accomplished. They said it would already be in the order and Letters of Guardianship if under $40,000.]

Page 26 – Section Ten – Rights of Proposed Ward
Other rights (procedural-types) to be added here:
-right to be present at any hearing related to the guardianship
-right to have the hearing conducted in an accessible location.
[Agreed.]

Page 27-28 – Section Twelve – Procedures for Limited Term Guardianships
Under (1) We suggest the following addition (underlined language):
-(a) When Permitted. If it is demonstrated to the Court that a particular situation involves an alleged incompetent who requires the immediate appointment of a temporary guardian to prevent physical harm, exploitation, or dissipation of assets [i.e., tied to the purpose of guardianship] of the person or estate of an individual…..
[They think our "tied to the purpose of guardianship" is too limited, and noted that they are often doing it for immediate MA planning. They think that their language of "a particular situation requires it" is enough. They suggest language: "If it is demonstrated to the Court that a particular situation involves an alleged incompetent whose best interests require the immediate appointment of a temporary guardian of the person or estate of an individual..."]]

Under (b), we suggest deleting the sentence: *No further temporary guardianship may be imposed by the court on the ward under this provision for a period of three (3) months following the expiration of the preceding temporary guardianship.* We suggest this deletion not because we want to see abuse of temporary guardianships by extending and extending these without any review, but rather recognizing that sometimes unforeseen circumstances occur (e.g., the need for the temporary guardianship really did stop after 120 days but resurfaced 60 (not 91) days later, or that they did temporary guardianships because the stroke victim really did look like he was getting better, but after 120 days it now looks like maybe just 45 days more, etc.) The two court commissioners who were part of our discussion group felt that they (and judges) had enough discretion and authority to make sure that the use of temporary guardianships weren't abused.
[Agreed.]

At (4) on page 28, third line, we'd like to add:
"At the hearing, the petitioner shall produce a report or testimony from a licensed physician or psychologist showing …."
[Agreed.]

Pages 28-31 – (2) Certain Admissions to Facilities

We had a long and lively discussion on this issue. Ultimately, we all became comfortable with this and understood the need for it (and consequences of not doing it) but would like to suggest two changes.

(1) We'd like to add in as an additional criteria under (b) [like a 5] that the person consenting to the admission signs some kind of statement indicating that ~~it is an emergency and~~ "there is an immediate need to protect the health, well-being and safety of the individual that can only be met by an immediate admission to the nursing home"; and

(2) On page 31, instead of the provisions of current proposed (h) that address situations of a protest by the proposed ward or anyone else that we include procedures identical to sec. 55.05(5)(c), Stats., which is applicable in situations where a guardian authorizes a short-term rehabilitative post-hospitalization admission to a nursing home, without a protective placement, BUT if a ward "verbally objects to or otherwise actively protests" the admission, the facility rep must immediately notify the county's adult protective services agency (or within 72 hours) to determine whether the protest persists, and if not, either get the person released or else comply with emergency protective placement procedures. It would seem that there would be good reasons to keep the procedures parallel since both involve admissions without a protective placement – and in this one, even without a guardian.

[Barb and Jim did not agree to this. They would rather keep it was the Section proposed, but tighten up the time for hearing so that it would be within 7, instead of 10, days. They would also then want to amend sec. 50.06, Stats., so that it is parallel.]

Page 31 – Section Thirteen – Standby Guardianships

We like (2), which lets the standby take over when the guardian is unable to fulfill duties during illness, extended vacation, etc., but wonder if we need some language about how the standby should then back out once the primary guardian is back.

[Agreed.]

Page 32 – (7) VERIFICATION, EXAMINATION IN COURT

This looks like it was taken out of some probate language so we're wondering if we should change the third line from the reference to "the decedent" to: *"Every guardian shall verify....that the inventory is true of all property which belongs to ~~his or her~~ the ward's estate, ~~or his or her ward~~ which has come to the guardian's possession...."*

[Agreed.]

Pages 34-35 – Section Three – Review and Termination of Guardianships

Under (2) REVIEW AND MODIFICATION we think it's great that a ward or any other interested person can ask for a review of a guardianship. One of our court commissioners, however, noted that this can occasionally be abused, i.e., a ward who asks for another review the day after the last one is heard. Thus, we suggest, again for consistency's sake, incorporating here the language of sec. 55.06(10)(b), which allows for a petition to be heard if a hearing has not been held within the previous six months, with an exception for exigent circumstances, new evidence, etc.

[With language added above, agreed.]

Page 36 – Section Four – Final Accounts

Under (1) RENDER FINAL ACCOUNT – One of our court commissioners suggested we add at the end of this section:
If the Guardian and Personal Representative are the same person, the Personal Representative shall give notice to all interested persons in the ward's estate.
[Agreed.]

Under (2), SMALL ESTATES – what section does the blank refer to?
[This refers to page 33 of the proposal at (3).]

Also in this section, we suggest considering permitting the guardian to pay for funeral expenses.
[They think this causes more problems than it solves.]

Pages 36-37 – Section Five – Review of Conduct of Guardian

Under (2), REMEDIES OF COURT, we suggest adding in: *Upon the motion of the court or any person ~~party~~, including the ward.....subdivision 3, below...*
[Agreed.]

Also in this section it seems that the order of (2) and (3) should be switched, i.e, the "cause for court action" should come before the "remedies."
[Agreed.]

As to the current section (3), "Cause for Court Action," we'd like to add in three more:
-between (b) and (c), "Reasonable cause to believe that the guardian abused or neglected the ward or knowingly permitted others to do so:
-between (e) and (f) failing to act in the best interests of the ward
-after (f), reasonable cause to believe that the guardian has been convicted of a crime that would have been grounds for the guardian not having been appointed.
[Agreed.]

Also, in the current (f), are you thinking that those blanks would include reference to language in the current secs. 880.19, 880.192, 880.251 and 880.39?
[Yes, as to be renumbered in this proposal.]

Page 37 – Fees and Costs in Proceedings Involving the Guardian

Under (5) FEES AND COSTS IN PROCEEDINGS INVOLVING THE GUARDIAN – Just to make sure that folks don't get this mixed up with the guardianship petitioner's attorney fees business, could we add at the end of (a), *"in matters relating to this subsection"*?
[Agreed.]

We also had a long discussion about (5)(b), permitting the ward, despite a finding of incompetency, to retain an attorney. The concern from some members of our group was certainly not about whether the ward had a right to representation – that we all agreed of course – but rather about whether the ward was competent to select an attorney who was competent in this area. One of the court commissioners in our group mentioned a situation in the commissioner's community where a local attorney, who occasionally represented petitioners, upon discovering

that a ward desired representation, would direct the ward to one of the petitioner's attorney's "friends" so that the ward really was not getting real independent zealous counsel and the whole petition was a slam-dunk anyway. This court commissioner felt that perhaps it was better for the court to select the attorney for the ward, recognizing that this took some of the choice away from the ward. A compromise we thought about was inserting language such as: "*The guardian may not restrict a ward in selecting his or her attorney.*"
[They suggested the language: "A ward may retain an attorney, the selection of whom is subject to court approval." This seems close enough to me.]

Page 38 – Section Six – Duties of GAL in Annual *Watts* Reviews
Instead of the language of (3) "Secure an additional evaluation of the ward, if necessary," we prefer the same language that you currently have on page 22, which lists the duties of the GAL in initial guardianships, *"Request that the court order additional medical, psychological or other evaluation, if necessary."*
[Agreed.]

Also in this section, it would appear that there needs to be some reference to the GAL duties as now arguably expanded by the recent *Goldie H.* case (Case No. 00-1137, Supreme Court decision reviewing an unpublished Court of Appeals case), which requires "some kind of hearing" in every *Watts* review – even if just the judge, GAL and court reporter.
[Agreed.] DAK - does this require changing 54.70 (1) and (8)

Page 38 – Section Seven – Compensation of Guardians of Person and Estate
-In both (1) and (2) we were uncomfortable with the word "entitled." Could it be changed to either "awarded" or "paid"?
[Agreed.]

-(3) appears to be just a typo problem. The guardian shall be "reimbursed for the amount" not "shall be reimbursement of the amount."
[Agreed.]

Page 39 – Section Eight – Compensation of GALs
This produced a lot of discussion. Our group was not in agreement about whether it was relevant to the topic of guardianship reform (some of us clearly thought so; others thought not at all). And further, as to the proposal itself, first we noted that in the fourth line you probably meant that the "amount ordered may not *be below* the compensation paid to the private attorneys," whereas now it says that that amount may not *exceed* the amount paid to the private attorneys. This issue, too, Todd Liebman agreed to take to the corporation counsels for more discussion as well as meet with Elder Law Section representatives about it.

The above list may look long and detailed and may appear to reflect great differences of opinions between our work group and the Elder Law Section. In fact, we think that most of our suggestions are fairly minor and/or simply technical clarifications and, as you can see, with fairly minor tweaking, we easily reached consensus. We are eager to work together to get this drafted, introduced and passed. I hope to compile your responses quickly and then send forward the

places where we have clear consensus, and perhaps get together with a few of you where we still have differences of opinion. *Thanks!*

Kennedy, Debora

From: Kennedy, Debora

Sent: Friday, January 25, 2002 3:25 PM

To: 'Betsy Abramson'; Ann Flynn; Jim Jaeger; Barbara S. Hughes; Kennedy, Debora

Cc: Jenny Boese

Subject: RE: Guard Reform - a new chapter?

In response to Betsy's message, I now understand that your intent is to have the guardianship proposal sited in a new chapter, e.g., ch. 54. I have no problem with that idea as long as everyone understands that to execute it will involve renumbering into ch. 54 all of the provisions that are affected by the proposal, whether currently in ch. 880, stats., or whether newly created under the proposal. It will also involve renumbering all references to current provisions in subch. I of ch. 880, stats., that are contained in statutes that are outside of that subchapter. (I must clarify that drafting procedure does not allow me to simply repeal subch. I of ch. 880, stats., and create wholly new text in ch. 54; if I were to do that, all of the legislative history that currently exists in ch. 880 would be lost, which in future years would make past legislative intent extremely difficult to discern.) The end result will be a bill draft with a "new" chapter 54 that will contain some items from ch. 880 that are unchanged (except for the renumbering), some items from ch. 880 that are changed (amended), and the new items that the committee has thought up. Although, if enacted, the sequential order of the new chapter will be very similar to the sequential order of the statutes that is set forth in the guardianship proposal, the bill to effect this will be confusing because, in drafting, we must treat each current statutory number in sequence, regardless of the place that it is ultimately renumbered to go. I have spoken to our Administrative Service Manager, Cathlene Hannaman, to see if, in addition to ultimately providing you with a bill, I can also provide you with an accompanying document that orders all the provisions in the sequence that they will appear when enacted--she is enquiring of the Legislative Technical Services Bureau (our computer backup) as to whether this can be done for you--I will let you know.

One thing that I would ask you to consider, in having a new chapter 54, is whether there are provisions in subchapters II to V in ch. 880, stats., that you also want to have contained in ch. 54--I am referring particularly to subchs. II and IV.

> -----Original Message-----
> **From:** Betsy Abramson [mailto:abramson@mailbag.com]
> **Sent:** Friday, January 25, 2002 12:17 PM
> **To:** Ann Flynn; Jim Jaeger; Barbara S. Hughes; Kennedy, Debora
> **Cc:** Jenny Boese
> **Subject:** Guard Reform - a new chapter?
>
> I conveyed to Debora this morning that the four of us are her little steering committee on this - Hughes, Jaeger, Abramson and by extension, Flynn. I also told her that we had planned/hoped that this would all result in a brand new chapter (our first choices being either ch. 54 or a ch. 56). She indicated that there were, of course, issues related to that. She is going to do some research internally at LRB about what happened when the family law stuff became a brand new ch. 767 and then will send us all an e-mail letting us know about the options, issues, etc. In the meantime, Ann, Debora says that what you are doing is perfect, excellent and enormously helpful and would be just as needed (as you and I discussed by phone this noon) even if we do end up with a brand new chapter number, so, forge ahead! Thanks all. Bets
>
> Betsy J. Abramson
> Attorney/Elder Law Consultant
> 16 N. Carroll St., Suite 500
> Madison, WI 53703
> (608) 663-3599
> (608) 250-4370 - fax
> abramson@mailbag.com

Problems with the proposed revision; needs and recommendations

Problems

1. The proposed revision creates six subchapters with no reference to subchs. II to V in current law. What is the intent? To renumber current subchapters? Is that necessary and appropriate?

2. The proposed revision does not, in most cases, differentiate between current law and newly created or amended provisions; it also does not include a statement of what the committee was attempting to do. Therefore, when one encounters inconsistencies or provisions that conflict, it is difficult to know whether they are oversights in typing out the provisions or whether they are intentional but need to be reconciled. Two examples:

a. The proposed revision eliminates from the provision that appears to correspond to s. 880.03, stats., mention of a spendthrift as a person subject to guardianship. However, the definition of "guardianship" proposed includes mention of a spendthrift; if the language proposed for the definition of "incompetent" is intended to encompass spendthrifts, the definition of "guardian" must reflect that by an amendment that eliminates the term "spendthrift". However, if "spendthrift" is eliminated as a concept, shouldn't s. 880.76, stats., be amended or partially repealed?

b. The proposed revision, unlike current law, does not mention the specialized situations involving guardianship powers over an individual who refuses psychotropic medications (see s. 880.07 (2m) (c) and (cm), stats.). Is it intended that these paragraphs be repealed? If so, how should s. 51.20 (7) (d), stats., be addressed?

3. We do not draft declarations of policy except in instances in which a proposed statute is clearly constitutionally vulnerable.

4. It is unnecessary throughout to refer to a term ",as defined in s. _____," if the term is defined in s. 880.01 (which applies to the entire chapter).

Needs and recommendations

There are two extremely helpful things you could do for a drafter with regard to the proposed revision. First, mark each provision as one of the following (see the example):

1. Current law without change (CL).
2. Current law without change, as renumbered (RN).
3. Current law, as amended (AM).
4. Current law, as renumbered and amended (RA).
5. Current law, as repealed and recreated (RC).
6. Newly created provision (CR).

Secondly, if a provision is current law (whether unchanged, renumbered, amended, renumbered and amended, or repealed and recreated), include its current statutory number.

A third very helpful thing (but one that you may lack the time to do) would be a summary, as specific as possible, of what the committee was trying to do.

Some principles to bear in mind

1. We do not repeal a specific current law provision and create a new provision with the same number during the same biennial session; it makes the Revisor crazy.

2. Renumbering is costly, confusing, and prone to error; therefore, instead of renumbering many provisions, we "squeeze" them into current law. As an example, instead of renumbering the definitions s. 880.01 (1), (2), (3), etc., we would fit the definitions of "Activities of daily living" and "Conservator" (which are newly created in the proposed revision) between the current definitions in s. 880.01 (1) ("Agency") and s. 880.01 (2) ("Developmentally disabled person") as s. 880.01 (1g) and (1m).

3. The ordering of statutory units in Wisconsin is: chapter (e.g., ch. 880), subchapter (e.g., subch. I), section (e.g., 880.01), subsection (e.g., 880.01 (1), paragraph (e.g., 880.01 (1) (a)), subdivision (e.g., 880.01 (1) (a) 1.), and subdivision unit (e.g., 880.01 (1) (a) 1. a.). A provision that introduces other provisions is termed a section (or subsection, paragraph, etc.) "intro." (e.g., s. 880.01 (1) (intro.)). Statutory sections continue in numbering throughout a chapter; regardless of whether there are subchapters or not; hence, a subchapter, unless it is the first subchapter, does not contain sections that begin with ".01".

January 16, 2002

TO: Barbara Becker, Chair, Elder Law Section
FAX 414-273-3223

CC: Jenny Boese – FAX 257-5502
FROM: Betsy Abramson

RE: Guardianship Reform

Greetings and belated Happy New Year! I would have called you with all these questions but feel like they might be just a tad overwhelming so that it might be better if you had these questions in front of you first. I'll call you in a few days if I don't hear from you first, ok?

Well, the good news is: I believe we're headed towards progress! I met with Ann Flynn today to update her as to what has been happening and then she and I together met with LRB Drafter Debora Kennedy. Debora gave us a memo about the draft that we went over (copy as part of this FAX). In addition, here's what Debora says she needs:

(1) Ann is going to go through our draft and, looking at existing ch. 880, will mark every section of *our* draft as either being: (a) current law without change; (b) current law as amended; (c) current law as repealed and recreated; or (d) newly created provision. (Debora's memo categories under *Needs and Recommendations, 1, 3, 5 and 6.*)

(2) Ann is ALSO to go through all of ch. 880 and identify which sections are untouched by our draft and provide Debora guidance as to whether that means they are to be dropped or retained as is. **It is entirely possible/probable that she will need Section input on this.**

(3) To do this efficiently, it would be helpful if we knew sooner rather than later what is the pleasure of the Section Board regarding the proposed revisions to the proposal that my Adult Protective Services Modernization Project Sub-committee had developed, that I met with Jim and Barb on, and as reflected in my memo to the Section, dated 11/16/01. I had asked Section members to get back to me by 12/15/01 with any reaction but did not hear from anyone. Did/do Barb and Jim speak for the group or does the Section need to vote on this or look at it again or....?

(4) I had also staffed a small sub-committee looking at "transition" issues of kids (e.g., kids with developmental disabilities) who are 17 and about to transition into adults. We had four ideas that Barb H. and Jim looked at, and as I recall, at least Barb had responded and said fine. Same question as #2 – is that Section approval? (Copy attached.)

(5) Venue – I am trying to put together a small group of "stakeholders" on this – reps from DHFS, corp counsel, private attorneys, Register in Probate, Court Commissioner, advocates. If you designate someone from the Section to be your rep on this, what additional process/approval will you want from the Section before layering this into the proposal?

(6) Guardian's Authority to Consent to Psych Meds – Ditto as 5. The group here is pretty comparable to above.

(7) Once the draft comes up, with anticipated questions, who from the Section will you want to review it?

(8) Do we have any idea whether Gary George will still be the "sponsor"? Or was it Brian Burke?

CHAPTER 880

GUARDIANS AND WARDS

Cross–reference: See definitions in ch. 851.

SUBCHAPTER I

GENERAL PROVISIONS

880.01 Definitions. For the purpose of this chapter, unless the context otherwise requires:

(1) "Agency" means any public or private board, corporation or association which is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a county department under s. 51.42 or 51.437.

(2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

(3) "Guardian" means one appointed by a court to have care, custody and control of the person of a minor or an incompetent or the management of the estate of a minor, an incompetent or a spendthrift.

(4) "Incompetent" means a person adjudged by a court of record to be substantially incapable of managing his or her property or caring for himself or herself by reason of infirmities of aging, developmental disabilities, or other like incapacities. Physical disability without mental incapacity is not sufficient to establish incompetence.

(5) "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her own care or custody.

(6) "Interested person" means any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with the welfare of the person who is to be protected.

(7) "Minor" means a person who has not attained the age of 18 years.

(7m) "Not competent to refuse psychotropic medication" means that, because of chronic mental illness, as defined in s. 51.01 (3g), and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true:

(a) The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives.

(b) The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her chronic mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

(8) "Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability, continued consumption or absorption of substances, producing a condition which substantially impairs an individual from providing for the individual's own care or custody.

(9) "Spendthrift" means a person who because of the use of intoxicants or drugs or of gambling, idleness or debauchery or other wasteful course of conduct is unable to attend to business or thereby is likely to affect the health, life or property of the person or others so as to endanger the support of the person and the person's dependents or expose the public to such support.

(10) "Ward" means a subject for whom a guardian has been appointed.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268.

Guardianships and Protective Placements. Viney. Wis. Law. Aug. 1991.

880.02 Jurisdiction in circuit court. The circuit court shall have jurisdiction over all petitions for guardianship. A guardianship of the estate of any person, once granted, shall extend to all of his or her estate in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.02; 1977 c. 449; 1979 c. 32 s. 92 (14).

880.03 Persons and estates subject to guardianship. All minors, incompetents and spendthrifts are subject to guardianship. The court may appoint a guardian of the person of anyone subject to guardianship who is also a resident of the county, or of a nonresident found in the county, under extraordinary circumstances requiring medical aid or the prevention of harm to his or her person or property found in the county. The court may appoint a guardian of the estate of anyone subject to guardianship, whether a resident of the state or not, if any of the estate is located within the county. Separate guardians of the person and of the estate of a ward may be appointed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.03; 1993 a. 486.

880.04 Exceptions. (1) EMANCIPATION OF MARRIED MINORS. Except for minors found to be incompetent, upon marriage, a minor shall no longer be a proper subject for guardianship of the person and a guardianship of the person is revoked by the marriage of a minor ward. Upon application, the court may release in whole or in part the estate of a minor ward to the ward upon the ward's marriage. Upon marriage, the guardianship of an incompetent is subject to review under s. 880.34.

(2) SMALL ESTATES. If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of $10,000 or less, any court wherein an action or proceeding involving said property is pending may, in its discretion, without requiring the appointment of a guardian, order one of the following:

(a) Deposit in a savings account in a bank, the payment of whose accounts in cash immediately upon default of the bank are insured by the federal deposit insurance corporation; deposit in a savings account in a savings bank or a savings and loan association that has its deposits insured by the federal deposit insurance corporation; deposit in a savings account in a credit union having its deposits guaranteed by the Wisconsin credit union savings insurance corporation or by the national board, as defined in s. 186.01 (3m); or invest in interest–bearing obligations of the United States. The fee for the clerk's services in depositing and disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a).

(b) Payment to the natural guardian of the minor or to the person having actual custody of the minor.

(c) Payment to the minor.

(d) Payment to the person having actual or legal custody of the incompetent or to the person providing for the incompetent's care and maintenance for the benefit of the incompetent.

(2m) INFORMAL ADMINISTRATION. If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of $5,000 or less from an estate administered through informal administration under ch. 865, the personal representative may, without the appointment of a guardian, do any of the following:

(a) With the approval of the register in probate, take one of the actions under sub. (2) (a).

(b) With the approval of the guardian ad litem of the minor or incompetent, take one of the actions under sub. (2) (a) and file proof of the action taken and of the approval of the guardian ad litem with the probate registrar instead of filing a receipt under s. 865.21.

(3) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court wherein an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment to a custodian for the minor designated by the court under ss. 880.61 to 880.72 or under the uniform gifts to minors act or uniform transfers to minors act of any other state.

History: 1971 c. 41; 1973 c. 284; 1977 c. 50; 1981 c. 317; 1983 a. 369; 1985 a. 29, 142; 1987 a. 191; 1989 a. 138; 1991 a. 221; 1993 a. 486.

880.05 Venue. All petitions for guardianship of residents of the state shall be directed to the circuit court of the county of residence of the person subject to guardianship or of the county in which the person is physically present. A petition for guardianship of the person or estate of a nonresident may be directed to the circuit court of any county where the person or any property of the nonresident may be found.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.05; 1975 c. 393, 421; 1977 c. 449 s. 497; 1987 a. 27.

880.06 Change of venue. (1) ORIGINAL PROCEEDING. The court wherein a petition is first filed shall determine venue. If it is determined that venue lies in another county, the court shall order the entire record certified to the proper court. A court wherein a subsequent petition is filed shall, upon being satisfied of an earlier filing in another court, summarily dismiss such petition.

(2) CHANGE OF RESIDENCE OF WARD OR GUARDIAN. If a guardian removes from the county where appointed to another county within the state or a ward removes from the county in which he or she has resided to another county within the state, the circuit court for the county in which the ward resides may appoint a new guardian as provided by law for the appointment of a guardian. Upon verified petition of the new guardian, accompanied by a certified copy of appointment and bond if the appointment is in another county, and upon the notice prescribed by s. 879.05 to the originally appointed guardian, unless he or she is the same person, and to any other persons that the court shall order, the court of original appointment may order the guardianship accounts settled and the property delivered to the new guardian.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.06; 1977 c. 449; 1999 a. 85.

880.07 Petition; fees. (1) Any relative, public official or other person, may petition for the appointment of a guardian of a person subject to guardianship. Such petition shall state, so far as may be known:

(a) The name, date of birth, residence and post–office address of the proposed ward.

(b) The nature of the proposed ward's incapacity with specification of the incompetency or spendthrift habits.

(c) The approximate value of the proposed ward's property and a general description of its nature.

(d) Any assets previously derived from or benefits now due and payable from the U.S. department of veterans affairs.

(e) Any other claim, income, compensation, pension, insurance or allowance to which the proposed ward may be entitled.

(f) Whether the proposed ward has any guardian presently.

(g) The name and post–office address of any person nominated as guardian by the petitioner.

(h) The names and post–office addresses of the spouse and presumptive or apparent adult heirs of the proposed ward, and all other persons believed by the petitioner to be interested.

(i) The name and post–office address of the person or institution having the care and custody of the proposed ward.

(j) The interest of the petitioner, and if a public official or creditor is the petitioner, then the fact of indebtedness or continuing liability for maintenance or continuing breach of the public peace as well as the authority of the petitioner to act.

(1m) If the petition under sub. (1) alleges that the person is not competent to refuse psychotropic medication, the petition shall allege all of the following:

(a) That the person is likely to respond positively to psychotropic medication.

(b) That as a result of the person's failure to take medication the person is unable to provide for his or her care in the community. The person's past history is relevant to determining his or her current inability to provide for his or her care in the community under this paragraph.

(c) That unless protective services, including psychotropic medication, are provided the person will incur a substantial probability of physical harm, impairment, injury or debilitation or will present a substantial probability of physical harm to others.

(cm) That the substantial probability of physical harm, impairment, injury or debilitation is evidenced by the person's history of at least 2 episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act or omissions that resulted from the person's failure to participate in treatment, including psychotropic medication, and that resulted in a finding of probable cause for commitment under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (bg) or commitment ordered under s. 51.20 (13).

(d) That the person has attained the age of 18 years.

(2) A petition for guardianship may also include an application for protective placement or protective services or both under ch. 55.

(3) In accordance with s. 6.03 (3), any elector of a municipality may petition the circuit court for a determination that a person residing in such municipality is incapable of understanding the objective of the elective process and thereby ineligible to register to vote or to vote in an election. This determination shall be made by the court in accordance with the procedures set forth in ss. 880.08 (1) and 880.33 for determining limited incompetency. When a petition is filed under this subsection, the finding of the court shall be limited to a determination as to voting eligibility. The appointment of a guardian or limited guardian is not required for a person whose sole limitation is ineligibility to vote.

(4) If a petition for guardianship of the estate is filed, the fee prescribed in s. 814.66 (1) (b) shall be paid at the time of filing of the inventory or other documents setting forth the value of the estate.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.07; 1973 c. 284; 1977 c. 394; 1979 c. 32, 110, 355; 1981 c. 317; 1987 a. 366; 1989 a. 56; 1993 a. 316, 486.

Failure of a petitioner for a guardianship to name persons who obviously had an interest does not cancel the jurisdiction of the court, and where the persons had actual knowledge of the hearing and contested it, the court could appoint a guardian. Guardianship of Marak, 59 Wis. 2d 139, 207 N.W.2d 648.

A guardian has general authority to consent to medication for a ward, but may consent to psychotropic medication only in accordance with ss. 880.07 (1m) and 880.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. OAG 5–99.

880.075 Time of hearing for certain appointments. A petition for guardianship of a person who has been admitted to a nursing home or a community–based residential facility under s. 50.06 shall be heard within 60 days after it is filed. If an individual under s. 50.06 (3) alleges that an individual is making a health care decision under s. 50.06 (5) (a) that is not in the best interests of the incapacitated individual or if the incapacitated individual verbally objects to or otherwise actively protests the admission, the petition shall be heard as soon as possible within the 60–day period.

History: 1993 a. 187.

880.08 Notice of hearing for appointments and rehearings. Upon the filing of a petition for guardianship, and the court being satisfied as to compliance with s. 880.07, the court shall order notice of the time and place of hearing as follows:

(1) INCOMPETENTS. A petitioner shall have notice served of a petition for appointment or change of a guardian upon the proposed incompetent and existing guardian, if any, by personal service at least 10 days before the time set for hearing. If such proposed incompetent is in custody or confinement, a petitioner shall have notice served by registered or certified mail on the proposed incompetent's custodian, who shall immediately serve it on the proposed incompetent. The custodian shall inform the proposed incompetent of the complete contents of the notice and certify thereon that the custodian served and informed the proposed incompetent and returned the certificate and notice to the circuit judge. The notice shall include the names of all persons who are petitioning for guardianship. A copy of the petition shall be attached to the notice. The court shall cause the proposed incompetent, if able to attend, to be produced at the hearing. The proposed incompetent is presumed able to attend unless, after a personal interview, the guardian ad litem certifies in writing to the court the specific reasons why the person is unable to attend. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court shall hold the hearing in a place where the person may attend if requested by the proposed ward, guardian ad litem, adversary counsel or other interested person. Such notice shall also be given personally or by mail at least 10 days before the hearing to the proposed incompe-

tent's counsel, if any, guardian ad litem, presumptive adult heirs or other persons who have legal or physical custody of the proposed incompetent whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to such other persons or entities as the court may require. The court shall then proceed under s. 880.33.

(2) SPENDTHRIFTS. Notice shall be served personally upon the proposed spendthrift ward at least 10 days before the time set for hearing but the proposed ward may appear without objecting to the jurisdiction of the court over the proposed ward's person and thereupon the matter may be heard forthwith.

(3) MINORS. (am) When the proposed ward is a minor, notice shall be given as provided in s. 879.05 to all of the following persons, if applicable:

1. The proposed ward's spouse.
2. The proposed ward's parents.
3. A minor proposed ward over 14 years of age unless the minor appears at the hearing.
4. Any other person, agency, institution, welfare department or other entity having the legal or actual custody of the minor.

(e) No notice under par. (am) need be given to parents whose rights have been judicially terminated.

(4) REHEARINGS. Notice of a rehearing to determine if a ward is a proper subject to continue under guardianship shall be given as required for the appointment of a guardian.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.08; 1973 c. 284; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); 1975 c. 218, 393, 421; 1977 c. 449 s. 497; 1981 c. 379; 1989 a. 141; 1993 a. 486; 1999 a. 85.

880.09 Nomination; selection of guardians. The court shall consider nominations made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following:

(1) NOMINATION BY MINOR. A minor over 14 years may in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is without the state, or if other good reason exists, the court may dispense with the right of nomination.

(2) PREFERENCE. If one or both of the parents of a minor, a developmentally disabled person or a person with other like incapacity are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. The court shall appoint a corporate guardian under s. 880.35 only if no suitable individual guardian is available.

(3) EFFECT OF NOMINATION BY MINOR. If neither parent is suitable and willing, the court may appoint the nominee of a minor.

(4) GUARDIAN OF THE PERSON NOMINATED BY WILL. Subject to the rights of a surviving parent, a parent may by will nominate a guardian of the person of his or her minor child.

(5) GUARDIAN OF THE ESTATE NOMINATED BY WILL. A parent may by will nominate a guardian of the estate of the parent's minor child and may waive the requirement of a bond as to such estate derived through the will.

(6) TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS. Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate of any of his or her minor children who are in need of guardianship. For a person over the age of 18 found to be in need of guardianship under s. 880.33 by reason of a developmental disability or other like incapacity, a parent may by will nominate a testamentary guardian.

(7) ANTICIPATORY NOMINATION; PREFERENCE. Any person other than a minor may, at such time as the person has sufficient capacity to form an intelligent preference, execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating a person to be appointed as guardian of his or her person or property or both in the event that a guardian is in the future appointed. Such nominee shall be appointed as guardian by the court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose property, the guardian is to be appointed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.09; 1973 c. 284; 1975 c. 393; 1977 c. 449; 1993 a. 486.

The nomination by a parent unfit to be his children's guardian should be weighed by the court. In re Guardianship of Schmidt, 71 Wis. 2d 317, 237 N.W.2d 919.

880.10 Notice of appointment. If for any reason the court fails to appoint as guardian the nominee of the minor, the guardian who qualifies shall give notice of the guardian's appointment to the minor by certified mail addressed to the minor's last–known post–office address and an affidavit of such mailing shall be filed with the court within 10 days after the issuance of letters.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.10; 1993 a. 486.

880.12 Determination and order appointing guardian. **(1)** The court shall after hearing determine whether the person is a proper subject for guardianship. If the person is found to be in need of a guardian, the court shall appoint one or more guardians but not more than one guardian of the person shall be appointed unless they be husband and wife. The order shall specify the amount of the bond, if any, to be given.

(2) In appointing a guardian for a person who has been admitted to a nursing home or a community–based residential facility under s. 50.06, the court shall make a finding as to whether the person's incompetence is potentially reversible.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.12; 1993 a. 187.

880.125 Sufficiency of bond. In any action or proceeding wherein funds are to be paid to a guardian, the trial court or court approving disbursement of such funds shall, prior to payment or approval, be satisfied as to the sufficiency of the penal sum of the guardian's bond.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.125.

880.13 Bond. **(1)** FORM OF BOND. Upon the appointment of a guardian of the estate of a ward, except as provided under s. 880.60 (9), the court may require a bond given in accordance with ch. 878 and s. 895.345, conditioned upon the faithful performance of the duties of the guardian.

(2) WAIVER OF BOND. (a) Unless required under s. 880.60 (9), the court may waive the requirement of a bond at any time in its discretion or if so requested in a will wherein a nomination appears.

(b) Whenever a guardian has or will have possession of funds with a total value of $40,000 or less, the court may direct deposit of the funds in an insured account of a bank, credit union, savings bank or savings and loan association in the name of the guardian and the ward and payable only upon further order of the court. In such event the court may waive the requirement of a bond.

(3) BLANKET BOND FOR EMPLOYEE GUARDIAN OR CONSERVATOR. The circuit court may designate one or more persons who are county institutional employees, whose duty it is to act as guardian of one or more estates of incompetent persons upon appointment by the court, or as conservator for the estates of persons making application therefor, who are residents of the county home, patients of the county hospitals or county mental hospitals. The appointments shall be made subject to this chapter. The person, before entering upon duties, shall take an official oath. The court may waive the requirement of a bond or may require the person to give bond, with sufficient sureties, to the judge of the court, in a sum not less than $1,000 subject to court approval. The bond shall cover the person so designated and appointed in all guardianships and conservatorships to which the person has been or shall be appointed by the court. Additional bonds may be required from time to time. The expense of surety upon the bonds shall be paid by the county treasurer on the order of the circuit judge. The term of the person appointed shall terminate upon resignation or removal and approval of the person's accounts by the court.

History: 1971 c. 35; 1971 c. 41 s. 8; 1971 c. 211 s. 114; Stats. 1971 s. 880.13; 1973 c. 284 s. 32; 1973 c. 336 s. 79; 1977 c. 74, 449; 1983 a. 369; 1991 a. 221.

880.14 When letters to be issued. When a guardian has given bond as required and the bond has been approved by the judge, letters under the seal of the court shall be issued to the guardian.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.14; 1993 a. 486.

880.15 Temporary guardian. (1) APPOINTMENT. If, after consideration of a petition for temporary guardianship, the court finds that the welfare of a minor, spendthrift or an alleged incompetent requires the immediate appointment of a guardian of the person or of the estate, or of both, it may appoint a temporary guardian for a period not to exceed 60 days unless further extended for 60 days by order of the court. The court may extend the period only once. The authority of the temporary guardian shall be limited to the performance of duties respecting specific property, or to the performance of particular acts, as stated in the order of appointment. All provisions of the statutes concerning the powers and duties of guardians shall apply to temporary guardians except as limited by the order of appointment. The temporary guardian shall make the reports the court directs and shall account to the court upon termination of authority. The court assigned to exercise jurisdiction under chs. 48 and 938 has exclusive jurisdiction over the appointment of a temporary guardian of a minor for medical purposes but shall proceed in accordance with this section.

(1m) ADOPTION BY TEMPORARY GUARDIAN. No person appointed temporary guardian of a child under this section may adopt the child without complying with the adoption procedures of ch. 48.

(1s) NOTICE OF PETITION. The person petitioning for appointment of a temporary guardian shall cause notice to be given under s. 880.08 of that petition to the minor, spendthrift or alleged incompetent and, if the appointment is made, shall give notice of the appointment to the ward. The time limits of s. 880.08 do not apply to notice given under this subsection. The notice shall be served before or at the time the petition is filed or as soon thereafter as possible and shall include notice of the right to counsel and of the right to petition for reconsideration or modification of the temporary guardianship under s. 880.34 within 30 days of receipt of the notice.

(2) BOND OF TEMPORARY GUARDIAN. Every temporary guardian appointed under sub. (1) shall before entering upon the duties of his or her trust give bond to the judge of the circuit court in such sum and with such sureties the court designates and approves.

(3) CESSATION OF POWERS. If the temporary guardianship is not sooner terminated the duties and powers of the temporary guardian shall cease upon the issuing of letters of permanent guardianship to the guardian of the ward, or, if the ward is a minor, upon his becoming of age, or when it shall be judicially determined that any other disability of the temporary ward which was the cause of the temporary guardianship has terminated. Upon termination of the temporary guardian's duties and powers, a temporary guardian of the person shall file with the court any report that the court requires. A temporary guardian of the estate shall, upon termination of duties and powers, account to the court and deliver to the person or persons entitled to them all the estate of the ward in his or her hands. Any action which has been commenced by the temporary guardian may be prosecuted to final judgment by the successor or successors in interest, if any.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.15; 1977 c. 354, 418, 449; 1979 c. 175; 1981 c. 379; 1995 a. 77.

880.155 Visitation by grandparents and stepparents. (1) In this section, "stepparent" means the surviving spouse of a deceased parent of a minor child, whether or not the surviving spouse has remarried.

(2) If one or both parents of a minor child are deceased and the child is in the custody of the surviving parent or any other person, a grandparent or stepparent of the child may petition for visitation privileges with respect to the child, whether or not the person with custody is married. The grandparent or stepparent may file the petition in a guardianship or temporary guardianship proceeding under this chapter that affects the minor child or may file the petition to commence an independent action under this chapter. Except as provided in sub. (3m), the court may grant reasonable visitation privileges to the grandparent or stepparent if the surviving parent or other person who has custody of the child has notice of the hearing and if the court determines that visitation is in the best interest of the child.

(3) Whenever possible, in making a determination under sub. (2), the court shall consider the wishes of the child.

(3m) (a) Except as provided in par. (b), the court may not grant visitation privileges to a grandparent or stepparent under this section if the grandparent or stepparent has been convicted under s. 940.01 of the first–degree intentional homicide, or under s. 940.05 of the 2nd–degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

(4) The court may issue any necessary order to enforce a visitation order that is granted under this section, and may from time to time modify such visitation privileges or enforcement order upon a showing of good cause.

(4m) (a) If a grandparent or stepparent granted visitation privileges with respect to a child under this section is convicted under s. 940.01 of the first–degree intentional homicide, or under s. 940.05 of the 2nd–degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, the court shall modify the visitation order by denying visitation with the child upon petition, motion or order to show cause by a person having custody of the child, or upon the court's own motion, and upon notice to the grandparent or stepparent granted visitation privileges.

(b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

(5) This section applies to every minor child in this state whose parent or parents are deceased, regardless of the date of death of the parent or parents.

History: 1975 c. 122; 1995 a. 38; 1999 a. 9.

The adoption of a child of a deceased parent does not terminate the decedent's parents' grandparental visitation rights under s. 880.155. Grandparental Visitation of C.G.F. 168 Wis. 2d 62, N.W.2d 803 (1992).

Section 767.245 (5) sets an appropriate standard for determining the best interests of a child under this section. The court did not exceed its authority under this section or violate a parent's constitutional rights to raise a child by ordering grandparent visitation, nor did it violate this section by ordering a guardian ad litem, mediation, and psychological evaluations. The court was not authorized by this section to order psychotherapeutic treatment that was arguably in the child's best interests, but outside the scope of visitation. F.R. v. T.B. 225 Wis. 2d 628, 593 N.W.2d 840 (Ct. App. 1999).

Grandparent Visitation Rights. Rothstein. Wis. Law. Nov. 1992.

The Effect of C.G.F. and Section 48.925 on Grandparental Visitation Petitions. Hughes. Wis. Law. Nov. 1992.

880.157 Prohibiting visitation or physical placement if a parent kills other parent. (1) Except as provided in sub. (2), in an action under this chapter that affects a minor child, a court may not grant to a parent of the child visitation or physical placement rights with the child if the parent has been convicted under s. 940.01 of the first–degree intentional homicide, or under s. 940.05 of the 2nd–degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

(2) Subsection (1) does not apply if the court determines by clear and convincing evidence that visitation or periods of physical placement would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

History: 1999 a. 9.

880.16 When a guardian may be removed. **(1)** NOMINATION BY MINOR. When a minor ward has attained the age of 14 years a guardian of the minor ward's person, upon notice as required by the court, may be removed on petition of the ward for the purpose of having another person appointed guardian if it is for the best interest of the ward.

(2) REMOVAL FOR CAUSE. When any guardian fails or neglects to discharge the guardian's trust the court may remove the guardian after such notice as the court shall direct to such guardian and all others interested.

(3) CITATION TO GUARDIAN. (a) A citation to a guardian to appear in circuit court may be served in the manner provided for substituted service for summons in the court if the guardian has absconded or keeps himself or herself concealed so as to avoid personal service or if the guardian is a nonresident of this state or has absented himself or herself therefrom for a period of one year.

(b) Upon filing proof of service and at the time fixed in the citation such court shall consider such matter and take proof and grant such relief as shall be just; and any order or judgment made in said proceedings shall be binding upon such guardian and shall be prima facie evidence of all facts therein recited.

(4) FRAUD AS TO WARD'S ESTATE. Upon complaint made to the circuit court by any guardian or ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any person suspected of having concealed, stolen or conveyed away any of the money, goods, effects or instruments in writing belonging to the ward the court may cite and examine such suspected person and proceed with the person as to such charge in the same manner as is provided with respect to persons suspected of concealing or stealing the effects of a deceased person in s. 879.61.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.16; 1977 c. 449 ss. 458, 497; 1993 a. 486.

880.17 Successor guardian. **(1)** APPOINTMENT. When a guardian dies, is removed by order of the court, or resigns and the resignation is accepted by the court, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor guardian. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this chapter for an original appointment of a guardian.

(2) NOTICE. If the appointment under sub. (1) is made without hearing, the successor guardian shall provide notice to the ward and all interested persons of the appointment, the right to counsel and the right to petition for reconsideration of the successor guardian. The notice shall be served personally or by mail not later than 10 days after the appointment.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.17; 1993 a. 486; 1995 a. 73.

880.173 Guardian of the estate of a married person. **(1)** A guardian of the estate appointed under this chapter for a married person may exercise with the approval of the court, except as limited under s. 880.37, any management and control right over the marital property or property other than marital property and any right in the business affairs which the married person could exercise under ch. 766 if the person were not determined under s. 880.12 to be a proper subject for guardianship. Under this section, a guardian may consent to act together in or join in any transaction for which consent or joinder of both spouses is required or may execute a marital property agreement with the other spouse, but may not make, amend or revoke a will.

(2) The powers under sub. (1) are in addition to powers otherwise provided for a guardian of the estate.

History: 1983 a. 186; 1985 a. 37.

The standard for a trial court's exercise of discretion is whether the proposed action will benefit the ward, the estate, or members of the ward's immediate family. In Matter of Guardianship of F.E.H. 154 Wis. 2d 576, 453 N.W.2d 882 (1990).

880.175 Petition for placement of assets in trust. Upon petition by the guardian, a parent, the spouse, any issue or next of kin of any person, assets of the person may, in the discretion of the court and upon its order, after such notice as the court may require, be transferred to the trustee or trustees of an existing revocable living trust created by the person for the benefit of himself or herself and those dependent upon the person for support, or to the trustee or trustees of a trust created for the exclusive benefit of the person, if a minor, which distributes to him or her at age 18 or 21, or to his or her estate, or as he or she appoints if he or she dies prior to age 18 or 21.

History: 1971 c. 41 s. 8; 1971 c. 171; 1971 c. 228 ss. 36, 37; Stats. 1971 s. 880.175; 1977 c. 409.

880.18 Inventory. When a guardian of the estate has been appointed an inventory shall be made in the same manner and subject to the same requirements as are provided for the inventory of a decedent's estate. An appraisal of all or any part of the ward's estate shall be made when ordered by the court.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.18.

880.19 Management of ward's estate. **(1)** GENERAL DUTIES. The guardian of the estate shall take possession of all of the ward's real and personal property, and of rents, income, issues and benefits therefrom, whether accruing before or after the guardian's appointment, and of the proceeds arising from the sale, mortgage, lease or exchange thereof. Subject to such possession the title of all such estate and to the increment and proceeds thereof shall be in the ward and not in the guardian. It is the duty of the guardian of the estate to protect and preserve it, to retain, sell and invest it as hereinafter provided, to account for it faithfully, to perform all other duties required of the guardian by law and at the termination of the guardianship to deliver the assets of the ward to the persons entitled thereto.

(2) RETENTION OF ASSETS. (a) The guardian of the estate may, without the approval of the court, retain any real or personal property possessed by the ward at the time of appointment of the guardian or subsequently acquired by the ward by gift or inheritance without regard to ch. 881, so long as such retention constitutes the exercise of the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(b) The guardian of the estate may, with the approval of the court, after such notice as the court directs, retain any real or personal property possessed by the ward at the time of the appointment of the guardian or subsequently acquired by the ward by gift or inheritance for such period of time as shall be designated in the order of the court approving such retention, without regard to ch. 881.

(3) CONTINUATION OF BUSINESS. In all cases where the court deems it advantageous to continue the business of a ward, such business may be continued by the guardian of the estate on such terms and conditions as may be specified in the order of the court.

(4) INVESTMENTS. (a) The guardian of the estate may, without approval of the court, invest and reinvest the proceeds of sale of any guardianship assets and any other moneys in the guardian's possession in accordance with ch. 881.

(b) The guardian of the estate may, with the approval of the court, after such notice as the court directs, invest the proceeds of sale of any guardianship assets and any other moneys in the guardian's possession in such real or personal property as the court determines to be in the best interests of the guardianship estate, without regard to ch. 881.

(c) No guardian shall lend guardianship funds to himself or herself.

(5) SALES AND OTHER DISPOSITIONS. (a) The guardian of the estate may, without approval of the court, sell any property of the guardianship estate acquired by the guardian pursuant to sub. (4).

(b) The court, on the application of the guardian of the estate or of any other person interested in the estate of any ward, after such notice if any, as the court directs, may authorize or require the guardian to sell, mortgage, pledge, lease or exchange any property of the guardianship estate upon such terms as the court may order, for the purpose of paying the ward's debts, providing for the ward's care, maintenance and education and the care, maintenance and education of the ward's dependents, investing the proceeds or for any other purpose which is in the best interest of the ward.

(c) No guardian shall purchase property of the ward, unless sold at public sale with the approval of the court, and then only if the guardian is a spouse, parent, child, brother or sister of the ward or is a cotenant with the ward in the property.

(d) The provisions of this subsection insofar as they apply to real estate shall be subject to ch. 786.

(6) TRUST COMPANIES, EXEMPTION FROM INVESTMENT RESTRAINTS. The limitations of this section relating to retention, sale, investment or reinvestment of any asset shall not be applicable to any bank or trust company authorized to exercise trust powers.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.19; 1973 c. 85; 1975 c. 94 s. 91 (9); 1979 c. 32 s. 92 (14); 1993 a. 486.

A guardian is not authorized to make gifts from the guardianship estate to effectuate an estate plan that would avoid future death taxes. Michael S.B. v. Berns, 196 Wis. 2d 920, 540 N.W.2d 11 (Ct. App. 1995).

880.191 Inventories, accounts. (1) VERIFICATION, EXAMINATION IN COURT. Every guardian shall verify by the guardian's oath every inventory required of the guardian and verification shall be to the effect that the inventory is true of all property which belongs to his or her decedent's estate or his or her ward, which has come to the guardian's possession or knowledge, and that upon diligent inquiry the guardian has not been able to discover any property belonging to the estate or ward which is not included therein. The court, at the request of any party interested, or on its own motion, may examine the guardian on oath in relation thereto, or in relation to any supposed omission.

(2) CITATION TO FILE INVENTORY AND TO ACCOUNT. If any guardian neglects to file the inventory or account when required by law, the circuit judge shall call the guardian's attention to the neglect. If the guardian still neglects his or her duty in the premises, the court shall order the guardian to file the inventory and the costs may be adjudged against the guardian.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.191; 1977 c. 449; 1993 a. 486.

880.192 Fraud, waste, mismanagement. If the circuit court has reason to believe that any guardian within its jurisdiction has filed a false inventory, claims property or permits others to claim and retain property belonging to the estate which he or she represents, is guilty of waste or mismanagement of the estate or is unfit for the proper performance of duties, the court shall appoint a guardian ad litem for any minor or incompetent person interested and shall order the guardian to file the account. If upon the examination of the account the court deems it necessary to proceed further, a time and place for the adjustment and settlement of the account shall be fixed by the court, and at least 10 days' notice shall be given to the guardian ad litem and to all persons interested. If, upon the adjustment of the account, the court is of the opinion that the interests of the estate and of the persons interested require it, the guardian may be removed and another appointed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.192; 1977 c. 449.

880.195 Transfer of Menominees guardianship funds to trust. The circuit court which has appointed a guardian of the estate of any minor or incompetent who is a member of the Menominee Indian tribe as defined in s. 49.385 or a lawful distributee thereof may direct the guardian to transfer the assets of the minor or incompetent in the guardian's possession to the trustees of the trust created by the secretary of interior or his or her delegate which receives property of the minors or incompetents transferred from the United States or any agency thereof as provided by P.L. 83–399, as amended, and the assets shall thereafter be held, administered and distributed in accordance with the terms and conditions of the trust.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.195; 1977 c. 449; 1995 a. 27.

880.21 Use of estate for benefit of wards. (1) APPLICATION OF PERSONAL PROPERTY AND INCOME. Every guardian shall apply the personal property or the income therefrom or from the real estate, as far as may be necessary for the suitable education, maintenance and support of the ward and of the ward's family, if there be any legally dependent upon the ward for support, and for the care and protection of the ward's real estate. The parents, brothers and sisters of incompetent veterans of all wars are declared members of the incompetent veteran's family, and all payments heretofore made pursuant to court order to any dependent member of the family of any such incompetent, as herein defined, are ratified and approved.

(2) FOR SUPPLEMENTING PARENT'S SUPPORT OF MINOR. If any minor has property which is sufficient for his or her maintenance and education in a manner more expensive than his or her parents can reasonably afford, regard being had to the situation and circumstances of the family, the expenses of the minor's education and maintenance may be defrayed out of his or her property in whole or in part, as shall be judged reasonable and be directed by the circuit court.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.21; 1977 c. 449; 1993 a. 486.

880.215 Lis pendens, void contracts. A certified copy of the petition and order for hearing provided for in ss. 880.07 and 880.08 may be filed in the office of the register of deeds for the county; and if a guardian shall be appointed upon such application all contracts, except for necessaries at reasonable prices, and all gifts, sales and transfers of property made by such insane or incompetent person or spendthrift, after the filing of a certified copy of such petition and order as aforesaid, shall be void. The validity of a contract made by a person under limited guardianship is not void, however, unless the determination is made by the court in its finding under s. 880.33 (3) that the ward is incapable of exercising the power to make contracts.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.215; 1973 c. 284; 1997 a. 304.

880.22 Claims. (1) PAYMENT. Every general guardian shall pay the just debts of the ward out of the ward's personal estate and the income of the ward's real estate, if sufficient, and if not, then out of the ward's real estate upon selling the same as provided by law. But a temporary guardian shall pay the debts of his or her ward only on order of the court.

(2) PROCEEDINGS TO ADJUST CLAIMS. The guardian or a creditor of any ward may apply to the court for adjustment of claims against the ward incurred prior to entry of the order appointing the guardian or the filing of a lis pendens as provided in s. 880.215. The court shall by order fix the time and place it will adjust claims and the time within which all claims must be presented or be barred. Notice of the time and place so fixed and limited shall be given by publication as in estates of decedents; and all statutes relating to claims against and in favor of estates of decedents shall apply. As in the settlement of estates of deceased persons, after the court has made the order no action or proceeding may be commenced or maintained in any court against the ward upon any claim of which the circuit court has jurisdiction.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.22; 1977 c. 449; 1993 a. 486.

This section does not authorize payment of attorney fees from the guardianship estate that were incurred by those commencing and prosecuting the guardianship action. Community Care of Milwaukee County v. Evelyn O. 214 Wis. 2d 433, 571 N.W.2d 700 (Ct. App. 1997).

880.23 Actions. The guardian shall settle all accounts of the ward and may demand, sue for, collect and receive all debts and claims for damages due him or her, or may, with the approval of the circuit court, compound and discharge the same, and shall

appear for and represent his or her ward in all actions and proceedings except where another person is appointed for that purpose.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.23; 1977 c. 449.

A guardian may not sue for the loss of society and companionship of a ward, nor bring a separate claim for costs incurred or income lost on account of injuries to the ward. Conant v. Physicians Plus Medical Group, Inc. 229 Wis. 2d 271, 600 N.W.2d 21 (Ct. App. 1999).

880.24 Compensation allowed from estate. **(1)** FEES AND EXPENSES OF GUARDIAN. Every guardian shall be allowed the amount of the guardian's reasonable expenses incurred in the execution of the guardian's trust including necessary compensation paid to attorneys, accountants, brokers and other agents and servants. The guardian shall also have such compensation for the guardian's services as the court, in which the guardian's accounts are settled, deems to be just and reasonable.

(2) WARD'S EXPENSES IN PROCEEDINGS. When a guardian is appointed the court may allow reasonable expenses incurred by the ward in contesting the appointment.

(3) FEES AND COSTS OF PETITIONER. (a) Except as provided in par. (b), when a guardian is appointed, the court shall award from the ward's estate payment of the petitioner's reasonable attorney fees and costs, including those fees and costs, if any, related to protective placement of the ward, unless the court finds, after considering all of the following, that it would be inequitable to do so:

1. The petitioner's interest in the matter, including any conflict of interest that the petitioner may have had in pursuing the guardianship.

2. The ability of the ward's estate to pay the petitioner's reasonable attorney fees and costs.

3. Whether the guardianship was contested and, if so, the nature of the contest.

4. Any other factors that the court considers to be relevant.

(b) If the court finds that the ward had executed a durable power of attorney under s. 243.07 or a power of attorney for health care under s. 155.05 or had engaged in other advance planning to avoid guardianship, the court may not make the award specified in par. (a).

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.24; 1993 a. 486; 1999 a. 183.

Where a temporary guardian committed a clear breach of trust, the trial court had sufficient basis to award the temporary guardian no compensation. Yamat v. Verma L.B. 214 Wis. 2d 207, 571 N.W.2d 860 (Ct. App. 1997).

880.245 Accounting by agent. The circuit court, upon the application of any guardian appointed by it may order any person who has been entrusted by the guardian with any part of the estate of a decedent or ward to appear before the court, and may require the person to render a full account, on oath, of any property or papers belonging to the estate which have come to the person's possession and of his or her proceedings thereon. If the person refuses to appear and render an account the court may proceed against him or her as for contempt.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.245; 1977 c. 449.

880.25 Accounting. **(1)** ANNUAL REPORTS. Every guardian, except a corporate guardian, shall, prior to April 15 of each year, file an account under oath specifying the amount of property received and held or invested by the guardian, the nature and manner of the investment, and the guardian's receipts and expenditures during the preceding calendar year. When ordered by the court, the guardian shall within 30 days render and file a like account for any shorter term. In lieu of the filing of these accounts before April 15 of each year, the court may, by appropriate order upon motion of the guardian, direct the guardian of an estate to thereafter render and file the annual accountings within 60 days after the anniversary date of the guardian's qualification as guardian, with the accounting period from the anniversary date of qualification to the ensuing annual anniversary date. When any guardian of a minor has custody of the ward and the care of the ward's education, the guardian's report shall state the time that the ward attended school during the time for which the account is rendered and the name of the school. The guardian shall also report any change in the status of the surety upon the guardian's bond.

(2) DISPLAY OF ASSETS. Upon rendering the account the guardian shall produce for examination by the court, or some person satisfactory to the court, all securities, evidences of deposit and investments reported, which shall be described in the account in sufficient detail so that they may be readily identified. It shall be ascertained whether the securities, evidences of deposit and investments correspond with the account.

(3) SMALL ESTATES. When the whole estate of a ward or of several wards jointly, under the same guardianship, does not exceed $1,000 in value, the guardian shall be required to render account only upon the termination of the guardian's guardianship, unless otherwise ordered by the court.

(4) EXAMINATION OF ACCOUNTS. The account shall be promptly examined under the court's direction and if it is not satisfactory it shall be examined on 8 days' notice and the court shall make such order thereon as justice requires. Notice to the guardian may be served personally or by certified mail as the court directs. When the examination of a guardian's account is upon notice a guardian ad litem of the ward may be appointed.

(5) NOTICE. No action by the court upon any account shall be final unless it is upon notice.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.25; 1987 a. 220, 403; 1993 a. 486.

880.251 Removal of guardian. If a guardian resides out of this state; neglects to render the account within the time provided by law or the order of the court; neglects to settle the estate according to law or to perform any judgment or order of the court; absconds or becomes insane or otherwise incapable or unsuitable to discharge the trust, the circuit court may remove the guardian and appoint a successor. An order of removal may not be made until the person affected has been notified, under s. 879.67, or, if a resident, such notice as the court deems reasonable, to show cause at a specified time why he or she should not be removed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.251; 1977 c. 449; 1981 c. 314.

880.252 Accounts; failure of guardian to file. If a guardian fails to file the guardian's account as required by law or ordered by the court, the court may, upon its own motion or upon the petition of any party interested, issue an order to the sheriff ordering the guardian to show cause before the court why the guardian should not immediately make and file the guardian's reports or accounts. If a guardian fails, neglects or refuses to make and file any report or account after having been cited by the court so to do, or if the guardian fails to appear in court as directed by a citation issued under direction and by authority of the court, the court may, upon its own motion or upon the petition of any interested party, issue a warrant directed to the sheriff ordering that the guardian be brought before the court to show cause why the guardian should not be punished for contempt. If the court finds that the failure, refusal or neglect is wilful or inexcusable, the guardian may be fined not to exceed $50 or imprisoned not to exceed 10 days or both.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.252; 1993 a. 486.

880.253 Formal accounting by guardians. The judge may at any time require an accounting by any guardian at a hearing after notice to all interested persons including sureties on the bond of a guardian. The sureties on a bond of a guardian may once in every 3–year period petition the court for such a hearing.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.253.

880.26 Termination of guardianship. **(1)** GUARDIANSHIP OF THE PERSON. A guardianship of the person shall terminate when any of the following occurs:

(a) A minor ward attains his or her majority, unless the minor is incompetent.

(b) A minor ward lawfully marries.

(c) The court adjudicates a former incompetent to be competent.

(2) GUARDIANSHIP OF THE ESTATE. A guardianship of the estate shall terminate when any of the following occurs:

(a) A minor ward attains his or her majority.

(b) A minor ward lawfully marries and the court approves the termination.

(c) The court adjudicates a former incompetent or a spendthrift to be capable of handling his or her property.

(d) A ward dies, except when the estate can be settled as provided by s. 880.28.

(3) DEPLETED GUARDIANSHIPS. When the court determines that the estate of the ward is below $5,000 and reduced to a point where it is to the advantage of the ward to dispense with the guardianship, the court may terminate the guardianship and authorize disposition of the remaining assets as provided by s. 880.04 (2). The court, as a part of the disposition, may order a suitable amount paid to the county treasurer under order of the court or reserved in the guardianship to assure the ward a decent burial, a marker and care for the grave. In the case of an insolvent guardianship, the court may order an amount not exceeding $400 reserved in the guardianship or paid to the county treasurer under order of the court to assure the ward a decent burial.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.26; 1973 c. 284; 1983 a. 217; 1989 a. 307; 1993 a. 486; 1999 a. 85.

New grounds for termination. 54 MLR 111.

880.27 Settlement of accounts. Upon termination of a guardianship, or upon resignation, removal or death of a guardian, such guardian or the guardian's personal representative shall forthwith render the guardian's final account to the court and to the former ward, the successor guardian or the deceased ward's personal representative as the case may be. Upon approval of the account and filing proper receipts the guardian shall be discharged and the guardian's bond released.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.27; 1993 a. 486.

880.28 Summary settlement of small estates. When a ward dies leaving an estate which can be settled summarily under s. 867.01, the court may approve such settlement and distribution by the guardian, without the necessity of appointing a personal representative.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.28; 1975 c. 200.

880.29 Delivery of property to foreign guardian. When property of a nonresident ward is in the possession of or due from a guardian or personal representative appointed in this state, the appointing court may order such property delivered to the foreign guardian upon filing a verified petition, accompanied by a copy of his or her appointment and bond, authenticated so as to be admissible in evidence, and upon 10 days' notice to the resident guardian or personal representative. Such petition shall be denied if granting it shall appear to be against the interests of the ward. The receipt of the foreign guardian for the property so delivered shall be taken and filed with the other papers in the proceeding, and a certified copy thereof shall be sent to the court which appointed such guardian.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.29; 1975 c. 200.

880.295 Guardian for mentally ill patient or conservator for county hospital patient or county home resident. **(1)** When a patient in any state or county hospital or mental hospital or in any state institution for the mentally deficient, or a resident of the county home or infirmary, appears in need of a guardian, and does not have a guardian, the department of health and family services by its collection and deportation counsel, or the county corporation counsel, may apply to the circuit court of the county in which the patient resided at the time of commitment or the circuit court of the county in which the facility in which the patient resides is located for the appointment of a guardian of the person and estate, or either, or for the appointment of a conservator of the estate, and the court, upon the application, may appoint the guardian or conservator in the manner provided for the appointment of guardians under ss. 880.08 (1) and 880.33 or for the appointment of conservators under s. 880.31. If application is made by a corporation counsel, a copy of the petition made to the court shall be filed with the department of health and family services. If application is made by a corporation counsel for appointment of a guardian of the estate of the patient or resident, or by the patient or resident for appointment of a conservator of the patient's or resident's estate, the court may designate the county as guardian or conservator if the court finds that no relative or friend is available to serve as guardian or conservator and the county is not required to make or file any oath or give any bond or security, except in the discretion of the court making the appointment, as similarly provided under s. 223.03 (8) in the case of the appointment of a trust company bank corporation. The court may place any limitations upon the guardianship or conservatorship as it deems to be in the best interest of the patient. Before any county employee administers the funds of a person's estate of which the county has been appointed guardian or conservator, the employee must be designated as securities agent in the classified service of the county, and the employee's designation as securities agent shall appear on all court papers which the security agent signs in the name of the county as guardian or conservator. The securities agent, before entering upon the duties, shall also furnish an official bond in such amount and with such sureties as the county board determines, subject to the prior approval of the amount by the court assigned to exercise jurisdiction. The bond shall be filed in the office of the register in probate, and a duplicate original thereof filed in the office of the county clerk. A conservatorship under this section shall be terminated by the court upon discharge of the patient unless application for continued conservatorship is made. The superintendent or director of the facility shall notify the court of the discharge of a patient for whom a guardian or conservator has been appointed under this subsection.

(2) Any guardian heretofore or hereafter appointed for any such inmate, who, having property of his or her ward in his or her possession or control exceeding $200 in value, fails to pay within 3 months after receipt of any bill thereof for the ward's care and support from the department of health and family services or the agency established pursuant to s. 46.21, shall, upon application of the collection and deportation counsel of said department or in counties having a population of 500,000 or more, the district attorney, forthwith be removed.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.295; 1975 c. 393, 421; 1977 c. 449; 1989 a. 31; 1993 a. 486; 1995 a. 27 s. 9126 (19).

880.31 Voluntary proceedings; conservators. (1) Any adult resident who believes that he or she is unable properly to manage his or her property or income may voluntarily apply to the circuit court of the county of his or her residence for appointment of a conservator of the estate. Upon receipt of the application the court shall fix a time and place for hearing the application and direct to whom and in what manner notice of the hearing shall be given.

(2) At the time of such hearing the applicant shall be personally examined and if the court is satisfied that the applicant desires a conservator and that the fiduciary nominated is suitable, the court may appoint the nominee as conservator and issue letters of conservatorship to the nominee upon the filing of a bond in the amount fixed by the court.

(3) A conservator shall have all the powers and duties of a guardian of the property of an incompetent person. The conservator's powers shall cease upon being removed by the court or upon death of the person whose estate is being conserved.

(4) Any person whose estate is under conservatorship may apply to the court at any time for termination thereof. Upon such application, the court shall fix a time and place for hearing and direct that 10 days' notice by mail be given to the person's guardian, if any, the conservator and the presumptive heirs of the applicant. Upon such hearing, the court shall, unless it is clearly shown that the applicant is incompetent, remove the conservator and order the property restored to the applicant, or if the applicant so

desires and the nominee is suitable, the court may appoint a successor conservator.

(5) If the court shall upon such hearing determine that the person whose estate is administered by a conservator may be incapable of handling his or her estate, the court shall order the conservatorship continued, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator.

(6) Appointment of a conservator shall not be evidence of the competency or incompetency of the person whose estate is being administered.

(7) If an application for conservatorship is filed, the fee prescribed in s. 814.66 (1) (b) shall be paid at the time of the filing of the inventory or other documents setting forth the value of the estate.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.31; 1975 c. 393, 421; 1977 c. 449; 1981 c. 317, 391; 1993 a. 486.

A gift by a competent conservatee without the approval of the conservator was void. Zobel v. Fenendael, 127 Wis. 2d 382, 379 N.W.2d 887 (Ct. App. 1985).

880.32 Notes and mortgages of minor veterans. Notwithstanding any provision of this chapter or any other law to the contrary, any minor who served in the active armed forces of the United States at any time after August 27, 1940, and the husband or wife of such minor may execute in his or her own right, notes or mortgages, the payment of which is guaranteed or insured by the U.S. department of veterans affairs or the federal housing administrator under the servicemen's readjustment act of 1944 or the national housing act or any acts supplementary thereto or amendatory thereof. In connection with such transactions, such minors may sell, release or convey such mortgaged property and litigate or settle controversies arising therefrom, including the execution of releases, deeds and other necessary papers or instruments. Such notes, mortgages, releases, deeds and other necessary papers or instruments when so executed shall not be subject to avoidance by such minor or the husband or wife of such minor upon either or both of them attaining the age of 18 because of the minority of either or both of them at the time of the execution thereof.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.32; 1989 a. 56; 1997 a. 188.

880.33 Incompetency; appointment of guardian. (1) Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the mental condition of the proposed ward, based upon examination. The privilege under s. 905.04 shall not apply to this statement. A copy of the statement shall be provided to the proposed ward, guardian ad litem and attorney. Prior to the examination, under this subsection, of a person alleged to be not competent to refuse psychotropic medication under s. 880.07 (1m), the person shall be informed that his or her statements may be used as a basis for a finding of incompetency and an order for protective services, including psychotropic medication. The person shall also be informed that he or she has a right to remain silent and that the examiner is required to report to the court even if the person remains silent. The issuance of such a warning to the person prior to each examination establishes a presumption that the person understands that he or she need not speak to the examiner.

(2) (a) 1. The proposed ward has the right to counsel whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1) and shall in addition require representation by full legal counsel whenever the petition contains the allegations under s. 880.07 (1m) or if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, attorney or guardian ad litem, except that if the petition contains the allegations under s. 880.07 (1m) and if notice of the time set for the hearing has previously been provided to the proposed ward and his or her counsel, a jury trial is deemed waived unless demanded at least 48 hours prior to the time set for the hearing. The number of jurors shall be determined under s. 756.06 (2) (b). The proposed ward, attorney or guardian ad litem shall have the right to present and cross–examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal.

2. If the person requests but is unable to obtain legal counsel, the court shall appoint legal counsel. If the person is represented by counsel appointed under s. 977.08 in a proceeding for a protective placement under s. 55.06 or for the appointment of a guardian under s. 880.07 (1m), the court shall order the counsel appointed under s. 977.08 to represent the person.

3. If the person is an adult who is indigent, the county of legal settlement shall be the county liable for any fees due the guardian ad litem and, if counsel was not appointed under s. 977.08, for any legal fees due the person's legal counsel. If the person is a minor, the person's parents or the county of legal settlement shall be liable for any fees due the guardian ad litem as provided in s. 48.235 (8).

(b) If requested by the proposed ward or anyone on the proposed ward's behalf, the proposed ward has the right at his or her own expense, or if indigent at the expense of the county where the petition is filed, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

(d) The hearing on a petition which contains allegations under s. 880.07 (1m) shall be held within 30 days after the date of filing of the petition, except that if a jury trial demand is filed the hearing shall be held within either 30 days after the date of filing of the petition or 14 days after the date of the demand for a jury trial, whichever is later. A finding by a court under s. 51.67 that there is probable cause to believe that the person is a proper subject for guardianship under s. 880.33 (4m) has the effect of filing a petition under s. 880.07 (1m).

(e) Every hearing on a petition under s. 880.07 (1m) shall be open, unless the proposed ward or his or her attorney acting with the proposed ward's consent moves that it be closed. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses, may be present.

(3) In a finding of limited incompetency, guardianship of the person shall be limited in accordance with the order of the court accompanying the finding of incompetence. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian. The court shall make a specific finding as to which legal rights the person is competent to exercise. Such rights include but are not limited to the right to vote, to marry, to obtain a motor vehicle operator's license or other state license, to hold or convey property and the right to contract. The findings of incompetence must be based upon clear and convincing evidence. The court shall determine if additional medical or psychological testimony is necessary for the court to make an informed decision respecting competency to exercise legal rights and may obtain assistance in the manner provided in s. 55.06 (8) whether or not protective placement is made. The guardian, ward or any interested person may at any time file a petition with the court requesting a restoration of any such legal right, and specifying the reasons therefor. Such petition may request that a guardianship of the person be terminated and a guardianship of property be established.

(4) When it appears by clear and convincing evidence that the person is incompetent, the court shall appoint a guardian.

(4m) (a) If the court finds by clear and convincing evidence that the person is not competent to refuse psychotropic medication and the allegations under s. 880.07 (1m) are proven, the court shall appoint a guardian to consent to or refuse psychotropic medication on behalf of the person as provided in the court order under par. (b).

(b) In any case where the court finds that the person is not competent to refuse psychotropic medication under s. 880.07 (1m) and appoints a guardian to consent to or refuse psychotropic medication on behalf of the person, the court shall do all of the following:

1. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to develop or furnish, to provide to the ward, and to submit to the court, a treatment plan specifying the protective services, including psychotropic medication as ordered by the treating physician, that the proposed ward should receive.

2. Review the plan submitted by the county department under subd. 1., and approve, disapprove or modify the plan.

2m. If the court modifies the treatment plan under subd. 2., the court shall order the appropriate county department under s. 46.23, 51.42 or 51.437 to provide the modified treatment plan to the ward.

3. Order protective services under ch. 55.

4. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to ensure that protective services, including psychotropic medication, are provided under ch. 55, in accordance with the approved treatment plan.

(4r) If a person substantially fails to comply with the administration of psychotropic medication, if any, ordered under the approved treatment plan under sub. (4m), a court may authorize the person's guardian to consent to forcible administration of psychotropic medication to the person, if all of the following occur before the administration:

(a) The corporation counsel of the county or the person's guardian files with the court a joint statement by the guardian and the director or the designee of the director of the treatment facility that is serving the person or a designated staff member of the appropriate county department under s. 46.23, 51.42 or 51.437, stating that the person has substantially failed to comply. The statement shall be sworn to be true and may be based on the information and beliefs of the individuals filing the statement.

(b) Upon receipt of the joint statement of noncompliance, if the court finds by clear and convincing evidence that the person has substantially failed to comply with the administration of psychotropic medication under the treatment plan, the court may do all of the following:

1. Authorize the person's guardian to consent to forcible administration by the treatment facility to the person, on an outpatient basis, of psychotropic medication ordered under the treatment plan.

2. If the guardian consents to forcible administration of psychotropic medication as specified in subd. 1., authorize the sheriff or other law enforcement agency, in the county in which the person is found or in which it is believed that the person may be present, to take charge of and transport the person, for outpatient treatment, to an appropriate treatment facility.

(c) If the court authorizes a sheriff or other law enforcement agency to take charge of and transport the person as specified in par. (b) 2., a staff member of the appropriate county department under s. 46.23, 51.42 or 51.437 or of the treatment facility shall, if feasible, accompany the sheriff or other law enforcement agency officer and shall attempt to convince the person to comply voluntarily with the administration of psychotropic medication under the treatment plan.

(5) In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family are in conflict with the clearly appropriate decision. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian.

(5m) No person, except a nonprofit corporation approved by the department of health and family services under s. 880.35, who has guardianship of the person of 5 or more adult wards unrelated to the person may accept appointment as guardian of the person of another adult ward unrelated to the person, unless approved by the department. No such person may accept appointment as guardian of more than 10 such wards unrelated to the person.

(6) All court records pertinent to the finding of incompetency are closed but subject to access as provided in s. 55.06 (17). The fact that a person has been found incompetent is accessible to any person who demonstrates to the custodian of the records a need for that information.

(7) A finding of incompetency and appointment of a guardian under this subchapter is not grounds for involuntary protective placement. Such placement may be made only in accordance with s. 55.06.

(8) At the time of determination of incompetency under this section, the court may:

(a) Hear application for the appointment of a conservator or limited guardian of property.

(b) If the proposed incompetent has executed a power of attorney for health care under ch. 155, find that the power of attorney for health care instrument should remain in effect. If the court so finds, the court shall so order and shall limit the power of the guardian to make those health care decisions for the ward that are not to be made by the health care agent under the terms of the power of attorney for health care instrument, unless the guardian is the health care agent under those terms.

(9) All the rights and privileges afforded a proposed incompetent under this section shall be given to any person who is alleged to be ineligible to register to vote or to vote in an election by reason that such person is incapable of understanding the objective of the elective process. The determination of the court shall be limited to a finding that the elector is either eligible or ineligible to register to vote or to vote in an election by reason that the person is or is not capable of understanding the objective of the elective process. The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925 or 6.93 with the responsibility for determining challenges to registration and voting which may be directed against that elector. The determination may be reviewed as provided in s. 880.34 (4) and (5) and any subsequent determination of the court shall be likewise communicated by the clerk of court.

History: 1973 c. 284; 1975 c. 393, 421; 1977 c. 29, 187; 1977 c. 203 s. 106; 1977 c. 299, 318, 394, 418, 447; 1979 c. 110, 356; 1981 c. 379; 1987 a. 366; Sup. Ct. Order, 151 Wis. 2d xxii, xxxiv; 1989 a. 200; Sup. Ct. Order, 153 Wis. 2d xxim xxv (1989); 1991 a. 32, 39; 1993 a. 16, 316; 1995 a. 27 s. 9126 (19); Sup. Ct. Order No. 96–08, 207 Wis. 2d xv (1997); 1997 a. 237.

Judicial Council Note, 1990: Sub. (3) is amended by striking reference to the right to testify in judicial or administrative proceedings. The statute conflicts with s. 906.01, as construed in State v. Hanson, 149 Wis. 2d 474 (1989) and State v. Dwyer, 149 Wis. 2d 850 (1989). [Re Order eff. 1–1–91]

A "common sense" finding of incompetency was insufficient for placement under s. 55.06. If competent when sober, an alcoholic has the right to choose to continue an alcoholic lifestyle. Guardianship & Protective Placement of Shaw, 87 Wis. 2d 503, 275 N.W.2d 143 (Ct. App. 1979).

The written report of a physician or psychologist under (sub. 1) is hearsay and not admissible in a contested hearing without in–court testimony of the preparing expert. In Matter of Guardianship of R.S. 162 Wis. 2d 197, 470 N.W.2d 260 (1991).

A guardian may not be given authority to forcibly administer psychotropic drugs to a ward. An order for the forcible administration of psychotropic drugs may only

be made in a ch. 51 proceeding. State ex rel. Roberta S. v. Waukesha DHS, 171 Wis. 2d 266, 491 N.W.2d 114 (Ct. App. 1992).

The expenses of a guardian ad litem in guardianship proceedings are correctly assessed to the ward under s. 757.48. Assessment of the costs of a medical expert are within the discretion of the court. Elgin and Carol W. v. DHFS, 221 Wis. 2d 36, 584 N.W.2d 195 (Ct. App. 1998).

The statutory provisions for an interested person's formal participation in guardianship and protective placement hearings are specific and limited. No statute provides for interested persons to demand a trial, present evidence or raise evidentiary objections. A court could consider such participation helpful and in its discretion allow an interested person to participate to the extent it considers appropriate. Coston v. Joseph P. 222 Wis. 2d 1, 586 N.W.2d 52 (Ct. APP. 1998).

Sub. (6) requires the closing only of documents filed with the register in probate with respect to ch. 880 proceedings. 67 Atty. Gen. 130.

A guardian has general authority to consent to medication for a ward, but may consent to psychotropic medication only in accordance with ss. 880.07 (1m) and 880.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. OAG 5-99.

880.331 Guardian ad litem in incompetency cases. (1) APPOINTMENT. The court shall appoint a guardian ad litem whenever it is proposed that the court appoint a guardian on the ground of incompetency under s. 880.33, protectively place a person or order protective services under s. 55.06, review any protective placement or protective service order under s. 55.06 or terminate a protective placement under s. 55.06.

(2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.

(3) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of the proposed ward or alleged incompetent as to guardianship, protective placement and protective services. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the proposed ward or alleged incompetent or the positions of others as to the best interests of the proposed ward or alleged incompetent. The guardian ad litem has none of the rights or duties of a general guardian.

(4) GENERAL DUTIES. A guardian ad litem shall do all of the following:

(a) Interview the proposed ward or alleged incompetent and explain the applicable hearing procedure, the right to counsel and the right to request or continue a limited guardianship.

(b) Advise the proposed ward or alleged incompetent, both orally and in writing, of that person's rights to a jury trial, to an appeal, to counsel and to an independent medical or psychological examination on the issue of competency, at county expense if the person is indigent.

(c) Request that the court order additional medical, psychological or other evaluation, if necessary.

(d) If applicable, inform the court that the proposed ward or alleged incompetent objects to a finding of incompetency, the present or proposed placement or the recommendation of the guardian ad litem as to the proposed ward's or alleged incompetent's best interests or that the proposed ward's or alleged incompetent's position on these matters is ambiguous.

(e) Present evidence concerning the best interests of the proposed ward or alleged incompetent, if necessary.

(f) Report to the court on any other relevant matter that the court requests.

(5) DUTIES IN REVIEWS. In any review of a protective placement under s. 55.06 or of a protective service order under s. 55.05, the guardian ad litem shall do all of the following:

(a) Interview the ward to explain the review procedure, the right to an independent evaluation, the right to counsel and the right to a hearing.

(b) Provide the information under par. (a) to the ward in writing.

(c) Secure an additional evaluation of the ward, if necessary.

(d) Review the annual report and relevant reports on the ward's condition and placement.

(e) Review the ward's condition, placement and rights with the guardian.

(f) If relevant, report to the court that the ward objects to the finding of continuing incompetency, the present or proposed placement, the position of the guardian or the recommendation of the guardian ad litem as to the best interests of the ward or if there is ambiguity about the ward's position on these matters.

(g) If relevant, report to the court that the ward requests the appointment of counsel or an adversary hearing.

(6) COMMUNICATION TO A JURY. In jury trials under ch. 55 or 880, the court or guardian ad litem may tell the jury that the guardian ad litem represents the interests of the proposed ward or alleged incompetent.

(7) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates, even if counsel has been appointed for the proposed ward or alleged incompetent. The court may extend that appointment, or reappoint a guardian ad litem whose appointment under this section has terminated, by an order specifying the scope of responsibilities of the guardian ad litem. At any time, the guardian ad litem, any party or the person for whom the appointment is made may request that the court terminate any extension or reappointment. The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal.

(8) COMPENSATION. On order of the court, the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue, unless the court otherwise directs or unless the guardian ad litem is appointed for a minor, in which case the compensation of the guardian ad litem shall be paid by the minor's parents or the county of venue as provided in s. 48.235 (8). If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08 (4m) (b).

History: Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1993 a. 16; 1995 a. 27; 1997 a. 237.

Judicial Council Note, 1990: This is a new section which more comprehensively identifies the situations in which a guardian ad litem should be appointed, the duration of such appointments and the guardian ad litem's duties. Sub. (1) requires such an appointment whenever it is proposed to appoint a guardian pursuant to s. 880.33, to protectively place a person, to provide protective services in lieu of placement under s. 55.06 (for instances in which a finding of incompetency is first required), to terminate a protective placement under s. 55.06 and upon the annual review required by State ex rel. Watts v. Combined Community Services Board of Milwaukee, 122 Wis. 2d 65 (1985).

Sub. (2) identifies the qualifications for a guardian ad litem.

Sub. (3) enumerates the general responsibilities of the guardian ad litem, consistent with the similar definition for other situations in which guardian ad litems are appointed.

Sub. (4) continues the specific duties in guardianship, protective placement and protective services situations which were previously enumerated in s. 880.33 (2) (c), which is repealed. Sub. (4) refers to alleged incompetents. This is done recognizing that the term may sometimes apply to persons already adjudicated as incompetent.

Sub. (5) is new and enumerates the duties of the guardian ad litem in reviews, consistent with the Watts decision.

A particularly troublesome issue is addressed in subs. (4) (d) and (5) (f). The position of the committee is that the guardian ad litem is to notify the court if the proposed ward objects to the listed matters so that adversary counsel can be appointed. In practice, the proposed ward may not be clear about his or her view of these matters. In such situations, the guardian ad litem is required to notify the court so the court can decide whether there is an objection. If there is, adversary counsel is to be appointed.

Sub. (6) addresses the subject of jury communication and is new, as is sub. (8) on fees. Fees for indigent proposed wards are to be paid by the county. In other situations the court may direct such payment to be made by any other appropriate person.

Sub. (7) provides for the termination of the appointment upon the conclusion of the matter, unless the court extends the appointment or unless the guardian ad litem decides not to participate in an appeal. Even if adversary counsel is appointed, the guardian ad litem is to continue to represent the best interests as opposed to wishes of the ward. The subsection leaves to the court's discretion whether there are useful specific functions the guardian ad litem can perform after the final order which lead to reappointment or extension. Such an extension or reappointment may be until the annual review required by Watts, but the scope of the duties must be specified. The

court may extend the guardian ad litem's responsibilities to include any review, but this does not occur unless the court expressly so orders. [Re Order effective Jan. 1, 1990]

There must be an annual review of each protective placement by a judicial officer. The requirements of ss. 51.15 and 51.20 must be afforded to protectively placed individuals facing involuntary commitment under s. 55.06 (9) (d) and (e). State ex rel. Watts v. Combined Community Services, 122 Wis. 2d 65, 362 N.W.2d 104 (1985).

A substantial relationship test applies for determining the need for attorney disqualification. Adversary counsel for the subject of an involuntary commitment may not be named guardian ad litem when the procedure is converted to a guardianship. Guardianship of Tamara L.P. 177 Wis. 2d 770, 503 N.W.2d 333 (Ct. App. 1993).

The court's power to appropriate compensation for court–appointed counsel is necessary for the effective operation of the judicial system. In ordering compensation for court ordered attorneys, a court should abide by the s. 977.08 (4m) rate when it can retain qualified and effective counsel at that rate, but should order compensation at the rate under SCR 81.01 or 81.02 or a higher rate when necessary to secure effective counsel. Friedrich v. Dane County Circuit Ct. 192 Wis. 2d 1, 531 N.W.2d 32 (1995).

RA; 54.64 (title)

880.34 Duration of guardianship; review. (1) Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the incompetent, or until terminated by the court. Upon reaching the age of majority, an incompetent subject to guardianship under this chapter shall be reviewed by the court for the purpose of determining whether the guardianship should be continued or modified. The court shall make a specific finding of any rights under s. 880.33 (3) which the individual is competent to exercise at the time.

RA; 54.64 (1)

(2) The court shall review and may terminate the guardianship of the person of an incompetent upon marriage to any person who is not subject to a guardianship.

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(3) A ward of the age of 18 or over, any interested person on the ward's behalf, or the ward's guardian may petition the court which made such appointment or the court in the ward's county of residence to have the guardian discharged and a new guardian appointed, or to have the guardian of the ward's property designated as a limited guardian.

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RA; 54.64 (2)(a) (intro.) and 4.

(4) A ward who is 18 years of age or older, any interested person acting on the ward's behalf, or the ward's guardian may petition for a review of incompetency. Upon such a petition for review, the court shall conduct a hearing at which the ward shall be present and shall have the right to a jury trial, if demanded. The ward shall also have the right to counsel and the court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent, counsel shall be provided at the expense of the ward's county of legal settlement.

RA; 54.64 (2)(c)

(5) After a hearing under sub. (4) or on its own motion, a court may terminate or modify a guardianship of an incompetent.

(6) (a) If the court appoints a guardian under s. 880.33 (4m) (a), the court shall do all of the following:

1. Order the county department responsible for ensuring that the person receives appropriate protective services to review, at least once every 12 months from the date of the appointment, the status of the person and file a written evaluation with the court, the person and the person's guardian. Guardianship and protective services orders for psychotropic medication under ch. 55 shall be reviewed annually. The evaluation shall include a description of facts and circumstances that indicate whether there is a substantial likelihood, based on the person's treatment record, that the person would meet the standard specified under s. 880.07 (1m) (c) if protective services, including psychotropic medication, were withdrawn. The substantial likelihood need not be evidenced by episodes in the person's history that are specified in s. 880.07 (1m) (cm). The evaluation shall also include recommendations for discharge or changes in the treatment plan or services, if appropriate.

2. Annually, appoint a guardian ad litem to meet with the person and to review the evaluations under subd. 1. The guardian ad litem shall inform the person and the guardian of all of the following:

a. The person's right to representation by full legal counsel under par. (b).

b. The right to an independent evaluation under par. (d) of the person's need for a guardian for the purpose of consenting to or refusing psychotropic medication and the need for and appropriateness of the current treatment or services.

c. The right to a hearing under par. (e) on the need for a guardian for the purpose of consenting to or refusing protective services, including psychotropic medication, and the need for and appropriateness of the current treatment or services.

(b) The court shall ensure that the person is represented by full legal counsel if requested by the person, the guardian or the guardian ad litem.

(c) The guardian ad litem shall file with the court a written report stating the guardian ad litem's conclusions with respect to all of the following:

1. Whether an independent evaluation should be conducted under par. (d).

2. Whether the person continues to be a proper subject for guardianship under s. 880.33 (4m) (a) and protective services, including psychotropic medication.

3. Whether a change in the treatment plan or protective services, including psychotropic medication, is warranted.

4. Whether the person or the guardian requests a change in status, treatment plan or protective services.

5. Whether a hearing should be held on the continued need for guardianship under s. 880.33 (4m) (a) and protective services, including psychotropic medication.

(d) Following review of the evaluation under par. (a) 1. and the guardian ad litem's report under par. (c), the court shall order an independent evaluation of the person's need for continued guardianship under s. 880.33 (4m) (a) and protective services or the appropriateness of the treatment plan or protective services, if requested by the person, the guardian or the guardian ad litem or if the court determines that an independent evaluation is necessary.

(e) The court shall order a hearing under this subsection upon request of the person, the guardian, the guardian ad litem or any interested person. The court may hold a hearing under this subsection on its own motion.

(f) The court shall do one of the following after holding a hearing under this subsection or, if no hearing is held, after reviewing the guardian ad litem's report and other information filed with the court:

1. Order continuation of the guardianship under s. 880.33 (4m) (a) and protective services order, without modification. The standard for continuation of protective services, including psychotropic medication, is a substantial likelihood, based on the person's treatment record, that the person would meet the standard specified under s. 880.07 (1m) (c) if protective services, including psychotropic medication, were withdrawn. The substantial likelihood need not be evidenced by episodes in the person's history that are specified in s. 880.07 (1m) (cm).

2. Order continuation of the guardianship under s. 880.33 (4m) (a), with modification of the protective services order.

3. Terminate the guardianship under s. 880.33 (4m) (a) and protective services order.

History: 1973 c. 284; 1987 a. 366; 1989 a. 56; 1993 a. 316, 486.

880.35 Nonprofit corporation as guardian. A private nonprofit corporation organized under ch. 181, 187 or 188 is qualified to act as guardian of the person or of the property or both, of an individual found to be in need of guardianship under s. 880.33, if the department of health and family services, under rules established under ch. 55, finds the corporation a suitable agency to perform such duties.

RA; 54.15 (5)

History: 1973 c. 284; 1975 c. 393; 1981 c. 379; 1995 a. 27 s. 9126 (19).

RN; 54.52 (title)

880.36 Standby guardianship. (1) A petition for the appointment of a standby guardian of the person or property or both of a minor or person found incompetent under s. 880.08 to assume the duty and authority of guardianship on the death, incapacity or resignation of the initially appointed guardian may be

RA; 54.52 (1)

brought under this chapter at any time. A petition for the appointment of a standby guardian of the person or property or both of a minor to assume the duty and authority of guardianship on the incapacity, death, or debilitation and consent, of the minor's parent shall be brought under s. 48.978.

(2) At any hearing conducted under this section the court may designate one or more standby guardians of the person or property whose appointment shall become effective immediately upon the death, incapacity, or resignation of the initially appointed guardian. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian. The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court.

History: 1973 c. 284; 1993 a. 486; 1997 a. 334.

880.37 Application for limited guardianship of property. **(1)** An incompetent person who is 18 years of age or older, a guardian or any person authorized to petition for guardianship of a person may apply to a court for a limited guardianship of property. Consonant with the least restrictive limitation of rights, when the person demonstrates to the satisfaction of the court that the person is capable of managing in whole or in part the person's wages, earnings, income or assets, the court may appoint a limited guardian of such person's property, or in the event one person is appointed or serving as both guardian of the person and of the property of such person, a guardian of the person with limited powers as guardian of the property. Such limited guardianship shall be used until the person has established himself or herself as reasonably capable of managing personal affairs without supervision.

(2) A limited guardian of the property shall receive, manage, disburse and account for all property, both real and personal, of the person not resulting from wages or earnings.

(3) Unless otherwise specified by the court, the person of 18 years of age or over for whom a limited guardian of the property has been appointed shall have the right to:

(a) Receive and expend any and all wages or other earnings from the person's employment; and

(b) Contract and legally bind himself or herself for any sum of money not exceeding $300 or one month's wages or earnings, whichever is greater.

(4) Notwithstanding sub. (3), the court may place such other limitations upon the rights of a person subject to limited guardianship of property under this section as it determines are in the best interests of the person.

(5) The appointment of a limited guardian of property shall have no bearing on any of the rights specified in s. 880.33 (3) except upon specific finding of the court based upon clear and convincing evidence of the need for such limitations. In no event shall the appointment of a limited guardian constitute evidence of or a presumption as to the incompetence of the ward in any area not mentioned in the court order.

History: 1973 c. 284; 1975 c. 393, 421; 1993 a. 486.

880.38 Guardian of the person of incompetent. **(1)** A guardian of the person of an incompetent, upon order of the court, may have custody of the person, may receive all notices on behalf of the person and may act in all proceedings as an advocate of the person, but may not have the power to bind the ward or the ward's property, or to represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the property. A guardian of the person of an incompetent or a temporary guardian of the person of an incompetent may not make a permanent protective placement of the ward unless ordered by a court under s. 55.06 but may admit a ward to certain residential facilities under s. 55.05 (5) or make an emergency protective placement under s. 55.06 (11). The guardian of the person has the power to apply for placement under s. 55.06 and for commitment under s. 51.20 or 51.45 (13).

(2) A guardian of the person shall endeavor to secure necessary care, services or appropriate protective placement on behalf of the ward.

(3) A guardian of the person of an incompetent appointed under s. 880.33 shall make an annual report on the condition of the ward to the court that ordered the guardianship and to the county department designated under s. 55.02. That county department shall develop reporting requirements for the guardian of the person. The report shall include, but not be limited to, the location of the ward, the health condition of the ward, any recommendations regarding the ward and a statement of whether or not the ward is living in the least restrictive environment consistent with the needs of the ward. The guardian may fulfill the requirement under this subsection by submitting the report required under s. 55.06 (10).

History: 1973 c. 284; 1975 c. 393, 421; 1975 c. 430 s. 80; 1981 c. 379; 1983 a. 36; 1985 a. 176.

There must be an annual review of each protective placement by a judicial officer. The requirements of ss. 51.15 and 51.20 must be afforded to protectively placed individuals facing involuntary commitment under s. 55.06 (9) (d) and (e). State ex rel. Watts v. Combined Community Services, 122 Wis. 2d 65, 362 N.W.2d 104 (1985).

The guardian of an incompetent in a persistent vegetative state may consent to the withdrawal or withholding of life–sustaining medical treatment without prior court approval if the guardian determines that the withdrawal or withholding is in the ward's best interests. In Matter of Guardianship of L.W. 167 Wis. 2d 53, 482 N.W.2d 60 (1992).

The guardian of a person who became incompetent after voluntarily entering a nursing home with 16 or more beds may not consent to the person's continued residence in the home. Upon the appointment of a guardian, the court must hold a protective placement hearing. Guardianship of Agnes T. 189 Wis. 2d 520, 525 N.W.2d 268 (1995).

The holding in *Guardianship of L.W.* does not extend to persons who are not in a persistent vegetative state. However, if the guardian of the person not in a persistent vegetative state demonstrates by a clear statement of the ward made while competent that withdrawal of medical treatment is desired, it is in the patient's best interest to honor those wishes. Spahn v. Eiseberg, 210 Wis. 2d 558, 563 N.W.2d 485 (1997).

Guardianships and Protective Placements in Wisconsin After *Agnes T.* Fennell. Wis. Law. May 1995.

880.39 Guardianship of person; exemption from civil liability. Any guardian of the person is immune from civil liability for his or her acts or omissions in performing the duties of the guardianship if he or she performs the duties in good faith, in the best interests of the ward and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs.

History: 1987 a. 366.

SUBCHAPTER II

UNIFORM VETERANS' GUARDIANSHIP ACT

880.60 United States uniform veterans' guardianship act. **(1)** DEFINITIONS. As used in this section:

(a) "Administrator" means the administrator of veterans' affairs of the United States or the administrator's successor.

(b) "Benefits" means all moneys paid or payable by the United States through the U.S. department of veterans affairs.

(c) "Estate" means income on hand and assets acquired partially or wholly with "income."

(d) "Guardian" means any fiduciary for the person or estate of a ward.

(e) "Income" means moneys received from the U.S. department of veterans affairs and revenue or profit from any property wholly or partially acquired therewith.

(f) "U.S. department of veterans affairs" means the U.S. department of veterans affairs, its predecessors or successors.

(g) "Ward" means a beneficiary of the U.S. department of veterans affairs.

(2) ADMINISTRATOR AS PARTY IN INTEREST. (a) The administrator shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability

of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the U.S. department of veterans affairs.

(b) Not less than 15 days prior to a hearing in a suit or proceeding described in par. (a), notice in writing of the time and place of the hearing shall be given by mail, unless notice is waived in writing, to the office of the U.S. department of veterans affairs having jurisdiction over the area in which the suit or proceeding is pending.

(3) APPLICATION. Whenever, pursuant to any law of the United States or regulation of the U.S. department of veterans affairs, it is necessary, prior to payment of benefits, that a guardian be appointed, the appointment may be made in the manner hereinafter provided.

(4) LIMITATION ON NUMBER OF WARDS. No person or corporate entity other than a county having a population of 100,000 or more or a bank or trust company shall be guardian of more than 5 wards at one time, unless all the wards are members of one family. A county shall act only for patients in its county hospital or mental hospital and for residents of its county home or infirmary, and shall serve without fee. Upon presentation of a petition by an attorney of the U.S. department of veterans affairs or other interested person, alleging that a guardian is acting in a fiduciary capacity for more than 5 wards and requesting the guardian's discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting from the guardian and shall discharge the guardian from guardianship in excess of 5 and appoint a successor.

(5) APPOINTMENT OF GUARDIANS. (a) A petition for the appointment of a guardian may be filed by any relative or friend of the ward or by any person who is authorized by law to file such a petition. If there is no person so authorized or if the person so authorized refuses or fails to file such a petition within 30 days after mailing of notice by the U.S. department of veterans affairs to the last–known address of the person, if any, indicating the necessity for the same, a petition for appointment may be filed by any resident of the state.

(b) The petition for appointment shall set forth the name, age, place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that the ward is entitled to receive benefits payable by or through the veterans' administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(c) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward and the name, age, relationship, if any, occupation and address of the proposed guardian and if the nominee is a natural person, the number of wards for whom the nominee is presently acting as guardian. Notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other individual or a bank or trust company as guardian, if the court determines it is for the best interest of the ward.

(d) In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent by the U.S. department of veterans affairs on examination in accordance with the laws and regulations governing the U.S. department of veterans affairs.

(6) EVIDENCE OF NECESSITY FOR GUARDIAN OF INFANT. Where a petition is filed for the appointment of a guardian for a minor, a certificate of the administrator or the administrator's authorized representative, setting forth the age of such minor as shown by the records of the U.S. department of veterans affairs and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the U.S. department of veterans affairs shall be prima facie evidence of the necessity for such appointment.

(7) EVIDENCE OF NECESSITY FOR GUARDIAN FOR INCOMPETENT. Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or the administrator's duly authorized representative, that such person has been rated incompetent by the U.S. department of veterans affairs on examination in accordance with the laws and regulations governing such U.S. department of veterans affairs and that the appointment of a guardian is a condition precedent to the payment of any moneys due such ward by the U.S. department of veterans affairs, shall be prima facie evidence of the necessity for such appointment.

(8) NOTICE. Upon the filing of a petition for the appointment of a guardian under this section, notice shall be given to the ward, to such other persons, and in such manner as is provided by statute, and also to the U.S. department of veterans affairs as provided by this section.

(9) BOND. (a) Upon the appointment of a guardian, the guardian shall execute and file a bond to be approved by the court in an amount not less than the estimated value of the personal estate and anticipated income of the ward during the ensuing year. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship law. The court may from time to time require the guardian to file an additional bond.

(b) Where a bond is tendered by a guardian with personal sureties, there shall be at least 2 such sureties and they shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all the surety's debts and liabilities and the aggregate of other bonds on which the surety is principal or surety and exclusive of property exempt from execution. The court may require additional security or may require a corporate surety bond, the premium thereon to be paid from the ward's estate.

(10) PETITIONS AND ACCOUNTS, NOTICES AND HEARINGS. (a) Every guardian shall file his or her accounts as required by this chapter and shall be excused from filing accounts in the case as provided by s. 880.25 (3).

(b) The guardian, at the time of filing any account, shall exhibit all securities or investments held by the guardian to an officer of the bank or other depository wherein said securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on the guardian's bond, or to the judge or clerk of a court of record, or, upon request of the guardian or other interested party, to any other reputable person designated by the court, who shall certify in writing that he or she has examined the securities or investments and identified them with those described in the account, and shall note any omissions or discrepancies. If the depository is the guardian, the certifying officer shall not be the officer verifying the account. The guardian may exhibit the securities or investments to the judge of the court, who shall indorse on the account and copy thereof a certificate that the securities or investments shown therein as held by the guardian were each in fact exhibited to the judge and that those exhibited to the judge were the same as those shown in the account, and noting any omission or discrepancy. That certificate and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount on deposit, shall be prepared and signed in duplicate and one of each be filed by the guardian with the guardian's account.

(c) At the time of filing in the court any account, a certified copy thereof shall be sent by the guardian to the office of the U.S. department of veterans affairs having jurisdiction over the area in which the court is located. A signed duplicate or a certified copy of any petition, motion or other pleading pertaining to an account, or to any matter other than an account, and which is filed in the guardianship proceedings or in any proceeding for the purpose of removing the disability of minority or mental incapacity, shall be furnished by the person filing the same to the proper office of the U.S. department of veterans affairs. Unless waived in writing,

written notice of the time and place of any hearing shall be given to the office of U.S. department of veterans affairs concerned and to the guardian and any others entitled to notice not less than 15 days prior to the date fixed for the hearing. The notice may be given by mail in which event it shall be deposited in the mails not less than 15 days prior to said date. The court, or clerk thereof, shall mail to said office of the U.S. department of veterans affairs a copy of each order entered in any guardianship proceeding wherein the administrator is an interested party.

(d) If the guardian is accountable for property derived from sources other than the U.S. department of veterans affairs, the guardian shall be accountable as required under the applicable law of this state pertaining to the property of minors or persons of unsound mind who are not beneficiaries of the U.S. department of veterans affairs, and as to such other property shall be entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section.

(11) PENALTY FOR FAILURE TO ACCOUNT. If any guardian shall fail to file with the court any account as required by this section, or by an order of the court, when any account is due or within 30 days after citation issues as provided by law, or shall fail to furnish the U.S. department of veterans affairs a true copy of any account, petition or pleading as required by this section, such failure may in the discretion of the court be ground for removal.

(12) COMPENSATION OF GUARDIANS. Guardians shall be compensated as provided in s. 880.24 (1).

(13) INVESTMENTS. Every guardian shall invest the surplus funds of the ward's estate in such securities or property as authorized under the laws of this state but only upon prior order of the court; except that the funds may be invested, without prior court authorization, in direct unconditional interest–bearing obligations of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the proper office of the U.S. department of veterans affairs, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

(14) MAINTENANCE AND SUPPORT. A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person other than the ward, the spouse and the minor children of the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of said petition shall be furnished the proper office of the U.S. department of veterans affairs and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account or other pleading.

(15) PURCHASE OF HOME FOR WARD. (a) The court may authorize the purchase of the entire fee simple title to real estate in this state in which the guardian has no interest, but only as a home for the ward, or to protect the ward's interest, or, if the ward is not a minor as a home for the ward's dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A copy of the petition shall be furnished the proper office of the U.S. department of veterans affairs and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

(b) Before authorizing such investment the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name. This subsection does not limit the right of the guardian on behalf of the guardian's ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; nor does it limit the right of the guardian, if such be necessary to protect the ward's interest and upon prior order of the court in which the guardianship is pending, to agree with cotenants of the ward for a partition in kind, or to purchase from cotenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty.

(16) COPIES OF PUBLIC RECORDS TO BE FURNISHED. When a copy of any public record is required by the U.S. department of veterans affairs to be used in determining the eligibility of any person to participate in benefits made available by the U.S. department of veterans affairs, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on the applicant's behalf or the authorized representative of the U.S. department of veterans affairs with a certified copy of such record.

(17) DISCHARGE OF GUARDIAN AND RELEASE OF SURETIES. In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the U.S. department of veterans affairs showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the U.S. department of veterans affairs upon examination in accordance with law shall be prima facie evidence that the ward has attained majority, or has recovered competency. Upon hearing after notice as provided by this section and the determination by the court that the ward has attained majority or has recovered competency, an order shall be entered to that effect, and the guardian shall file a final account. Upon hearing after notice to the former ward and to the U.S. department of veterans affairs as in case of other accounts, upon approval of the final account, and upon delivery to the ward of the assets due from the guardian, the guardian shall be discharged and the sureties released.

(18) LIBERAL CONSTRUCTION. This section shall be so construed to make uniform the law of those states which enact it.

(19) SHORT TITLE. This section may be cited as the "Uniform Veterans' Guardianship Act."

(20) MODIFICATION OF OTHER STATUTES. Except where inconsistent with this section, the statutes relating to guardian and ward and the judicial practice relating thereto, including the right to trial by jury and the right of appeal, shall be applicable to beneficiaries and their estates.

(21) APPLICATION OF SECTION. The provisions of this section relating to surety bonds and the administration of estates of wards shall apply to all "income" and "estate" as defined in sub. (1) whether the guardian shall have been appointed under this section or under any other law of this state, special or general, prior or subsequent to June 5, 1947.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.60; 1973 c. 284; 1973 c. 333 s. 201m; 1979 c. 89; 1983 a. 189; 1989 a. 56; 1993 a. 486; 1999 a. 63, 85.

SUBCHAPTER III

UNIFORM TRANSFERS TO MINORS ACT

880.61 Definitions. In ss. 880.61 to 880.72:

(1) "Adult" means an individual who has attained the age of 21 years.

(2) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for that person's account or for the account of others.

(3) "Conservator" means a person appointed or qualified by a court to act as general, limited or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(4) "Court" means the circuit court.

(5) "Custodial property" means any interest in property transferred to a custodian under ss. 880.61 to 880.72 and the income from and proceeds of that interest in property.

(6) "Custodian" means a person so designated under s. 880.65 or a successor or substitute custodian designated under s. 880.695.

(7) "Financial institution" means a bank, trust company, savings bank, savings and loan association or other savings institu-

has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under s. 880.625 or to require the custodian to give appropriate bond.

History: 1987 a. 191; 1997 a. 188.

880.70 Accounting by and determination of liability of custodian. (1) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor or a transferor's legal representative may petition the court:

(a) For an accounting by the custodian or the custodian's legal representative; or

(b) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under s. 880.69 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under ss. 880.61 to 880.72 or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under s. 880.695 (6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

History: 1987 a. 191.

880.705 Termination of custodianship. The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of 21 years of age with respect to custodial property transferred under s. 880.625 or 880.63;

(2) The minor's attainment of 18 years of age with respect to custodial property transferred under s. 880.635 or 880.64; or

(3) The minor's death.

History: 1987 a. 191.

880.71 Applicability. Sections 880.61 to 880.72 apply to a transfer within the scope of s. 880.615 made after April 8, 1988, if:

(1) The transfer purports to have been made under ss. 880.61 to 880.71, 1985 stats.; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of ss. 880.61 to 880.72 is necessary to validate the transfer.

History: 1987 a. 191.

880.715 Effect on existing custodianships. (1) Any transfer of custodial property as defined in ss. 880.61 to 880.72 made before April 8, 1988, is validated notwithstanding that there was no specific authority in ss. 880.61 to 880.71, 1985 stats., for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(2) Sections 880.61 to 880.72 apply to all transfers made before April 8, 1988, in a manner and form prescribed in ss. 880.61 to 880.71, 1985 stats., except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on April 8, 1988.

(3) Sections 880.61 to 880.705 with respect to the age of a minor for whom custodial property is held under ss. 880.61 to 880.72 do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 after March 23, 1972 and before April 8, 1988.

(4) To the extent that ss. 880.61 to 880.72, by virtue of sub. (2), do not apply to transfers made in a manner prescribed in ss. 880.61 to 880.71, 1985 stats., or to the powers, duties and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of ss. 880.61 to 880.71, 1985 stats., does not affect those transfers, powers, duties and immunities.

History: 1987 a. 191.

880.72 Uniformity of application and construction. Sections 880.61 to 880.72 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of ss. 880.61 to 880.72 among states enacting it.

History: 1987 a. 191.

SUBCHAPTER IV

SECURITIES OWNERSHIP BY MINORS, INCOMPETENTS AND SPENDTHRIFTS

880.75 Uniform securities ownership by minors act. (1) DEFINITIONS. In this section, unless the context otherwise requires:

(a) "Bank" is a bank, trust company, national banking association, industrial bank or any banking institution incorporated under the laws of this state.

(b) "Broker" means a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his or her own account, through a broker or otherwise, as a part of a regular business.

(c) "Issuer" means a person who places or authorizes the placing of his or her name on a security, other than as a transfer agent, to evidence that it represents a share, participation or other interest in his or her property or in an enterprise or to evidence his or her duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

(d) "Person" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

(e) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.

(f) "Third party" is a person other than a bank, broker, transfer agent or issuer who with respect to a security held by a minor effects a transaction otherwise than directly with the minor.

(g) "Transfer agent" means a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.

(2) SECURITY TRANSACTIONS INVOLVING MINORS; LIABILITY. A bank, broker, issuer, third party or transfer agent incurs no liability by reason of his or her treating a minor as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security, unless prior to acting in the transaction the bank, broker, issuer, third party or transfer agent had received written notice in the office acting in the transaction that the specific security is held by a minor or unless an indi-

vidual conducting the transaction for the bank, broker, issuer, third party or transfer agent had actual knowledge of the minority of the holder of the security. Except as otherwise provided in this section, such a bank, broker, issuer, third party or transfer agent may assume without inquiry that the holder of a security is not a minor.

(3) ACTS OF MINORS NOT SUBJECT TO DISAFFIRMANCE OR AVOIDANCE. A minor, who has transferred a security, received or empowered others to receive dividends, interest, principal, or other payments or distributions, voted or given consent in person or by proxy, or made an election or exercised rights relating to the security, has no right thereafter, as against a bank, broker, issuer, third party or transfer agent to disaffirm or avoid the transaction, unless prior to acting in the transaction the bank, broker, issuer, third party or transfer agent against whom the transaction is sought to be disaffirmed or avoided had received notice in the office acting in the transaction that the specific security is held by a minor or unless an individual conducting the transaction for the bank, broker, issuer, third party or transfer agent had actual knowledge of the minority of the holder.

(4) CONSTRUCTION. This section shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it.

(5) INTERPRETATION. This section shall supersede any provision of law in conflict therewith.

(6) TITLE. This section may be cited as the "Uniform Securities Ownership by Minors Act".

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.75; 1987 a. 191; 1991 a. 221; 1993 a. 486; 1999 a. 185.

880.76 Securities ownership by incompetents and spendthrifts. (1) DEFINITIONS. All definitions in s. 880.75 (1) (a) to (e) and (g) shall apply in this section, unless the context otherwise requires. "Third party" is a person other than a bank, broker, transfer agent or issuer who with respect to a security held by an incompetent or spendthrift effects a transaction otherwise than directly with the incompetent or spendthrift.

(2) SECURITY TRANSACTIONS INVOLVING INCOMPETENT OR SPENDTHRIFT; LIABILITY. A bank, broker, issuer, third party or transfer agent incurs no liability by reason of his or her treating an incompetent or spendthrift as having capacity to transfer a security, to receive or to empower others to receive dividends, interest, principal, or other payments or distributions, to vote or give consent in person or by proxy, or to make elections or exercise rights relating to the security, unless prior to acting in the transaction the bank, broker, issuer, third party or transfer agent had received written notice in the office acting in the transaction that the specific security is held by a person who has been adjudicated an incompetent or a spendthrift or unless an individual conducting the transaction for the bank, broker, issuer, third party or transfer agent had actual knowledge that the holder of the security is a person who has been adjudicated an incompetent or a spendthrift, or actual knowledge of filing of lis pendens as provided in s. 880.215. Except as otherwise provided in this section, such a bank, broker, issuer, third party or transfer agent may assume without inquiry that the holder of a security is not an incompetent or spendthrift.

(3) ACTS NOT SUBJECT TO DISAFFIRMANCE OR AVOIDANCE. An incompetent or spendthrift, who has transferred a security, received or empowered others to receive dividends, interest, principal, or other payments or distributions, voted or given consent in person or by proxy, or made an election or exercised rights relating to the security, has no right thereafter, as against a bank, broker, issuer, third party or transfer agent to disaffirm or avoid the transaction, unless prior to acting in the transaction the bank, broker, issuer, third party or transfer agent against whom the transaction is sought to be disaffirmed or avoided had received notice in the office acting in the transaction that the specific security is held by a person who has been adjudicated an incompetent or a spendthrift or unless an individual conducting the transaction for the bank, broker, issuer, third party or transfer agent had actual knowledge that the holder is a person who has been adjudicated an incompetent or a spendthrift, or actual knowledge of filing of lis pendens as provided in s. 880.215.

(4) INTERPRETATION. This section shall supersede any provision of law in conflict therewith.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.76; 1993 a. 486; 1999 a. 185.

SUBCHAPTER V

UNIFORM CUSTODIAL TRUST ACT

880.81 Definitions. In this subchapter:

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Beneficiary" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this subchapter.

(3) "Conservator" means a person appointed or qualified by a court by voluntary proceedings to manage the estate of an individual, or a person legally authorized to perform substantially the same functions.

(4) "Court" means the circuit court of this state.

(5) "Custodial trustee" means a person designated as trustee of a custodial trust under this subchapter or a substitute or successor to the person designated.

(6) "Custodial trustee property" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this subchapter and the income from and proceeds of that interest.

(7) "Guardian" means a person appointed or qualified by a court as a guardian of the person or estate, or both, of an individual, including a limited guardian, but not a person who is only a guardian ad litem.

(8) "Incapacitated" means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority or other disabling cause.

(9) "Legal representative" means a personal representative, conservator or guardian of the estate.

(10) "Member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle or aunt, whether of the whole or half blood or by adoption.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association or any other legal or commercial entity.

(12) "Personal representative" means an executor, administrator or special administrator of a decedent's estate, a person legally authorized to perform substantially the same functions or a successor to any of them.

(13) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(14) "Transferor" means a person who creates a custodial trust by transfer or declaration.

(15) "Trust company" means a financial institution, corporation or other legal entity, authorized to exercise general trust powers.

History: 1991 a. 246.

880.815 Custodial trust; general. (1) A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration or by other instrument of transfer executed in any lawful manner, naming as beneficiary an individual who may be the transferor, in which the

monitor in a nursing home, if any, and of the receivership, the court shall order payment of the surplus to the operator or controlling person, after reimbursement of funds drawn from the contingency fund under sub. (10). If the operating funds are insufficient to cover the reasonable expenses of the placement of a monitor in a nursing home, if any, and of the receivership, the operator or controlling person shall be liable for the deficiency. The operator or controlling person may apply to the court to determine the reasonableness of any expense of the placement of a monitor in a nursing home, if any, and of the receivership. The operator or controlling person shall not be responsible for expenses in excess of what the court finds to be reasonable. Payment recovered from the operator or controlling person shall be used to reimburse the contingency fund for amounts drawn by the receiver under sub. (10).

(c) The department has a lien for any deficiency under par. (b) upon any beneficial interest, direct or indirect, of any operator or controlling person in the following property:

1. The building in which the facility is located.

2. The land on which the facility is located.

3. Any fixtures, equipment or goods used in the operation of the facility.

4. The proceeds from any conveyance of property described in subd. 1., 2. or 3., made by the operator or controlling person within one year prior to the filing of the petition for receivership.

5. Any other property or assets of the operator or controlling person if no property or proceeds exist under subds. 1. to 4.

(d) The lien provided by this subsection is prior to any lien or other interest which originates subsequent to the filing of a petition for receivership under this section, except for a construction or mechanic's lien arising out of work performed with the express consent of the receiver or a lien under s. 292.31 (8) (i) or 292.81.

(e) The clerk of circuit court for the county in which the facility is located shall record the filing of the petition for receivership in the judgment and lien docket kept under s. 779.07 opposite the names of the operators and controlling persons named in the petition.

(f) The receiver shall, within 60 days after termination of the receivership, file a notice of any lien created under this subsection. No action on a lien created under this subsection may be brought more than 2 years after the date of filing. If the lien is on real property, the notice shall be filed with the clerk of circuit court of the county in which the facility is located and entered on the judgment and lien docket kept under s. 779.07. If the lien is on personal property, the lien shall be filed with the department of financial institutions. The department of financial institutions shall place the lien on personal property in the same file as financing statements are filed under ss. 409.401 and 409.402. The notice shall specify the name of the person against whom the lien is claimed, the name of the receiver, the dates of the petition for receivership and the termination of receivership, a description of the property involved and the amount claimed. No lien shall exist under this section against any person, on any property, or for any amount not specified in the notice filed under this paragraph. To the extent applicable, ch. 846 controls the foreclosure of liens under this subsection that attach to real property.

(16) OBLIGATIONS OF OWNERS. Nothing in this section shall be deemed to relieve any owner, operator or controlling person of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, operator or controlling person prior to the appointment of a receiver under this section, nor shall anything contained in this section be construed to suspend during the receivership any obligation of the owner, operator or controlling person for payment of taxes or other operating and maintenance expenses of the facility nor of the owner, operator or controlling person or any other person for the payment of mortgages or liens. No owner may be held professionally liable for acts or omissions of the receiver or the receiver's employees during the term of the receivership.

History: 1977 c. 112; 1979 c. 32 s. 92 (9); 1979 c. 34; 1981 c. 121; 1983 a. 27 s. 2202 (20); 1985 a. 29 s. 3200 (23) (b), (c); 1987 a. 27; 1989 a. 31; 1993 a. 112, 453; 1995 a. 27, 224, 227; 1997 a. 27, 35; 1999 a. 83.

50.053 Case conference. The department may hold a case conference with the parties to any contested action under this subchapter to resolve any or all issues prior to formal hearing. Unless any party to the contested case objects, the department may delay the commencement of the formal hearing in order to hold the case conference.

History: 1977 c. 170; 1999 a. 103.

50.06 Certain admissions to facilities. (1) In this section, "incapacitated" means unable to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions, including decisions about his or her post–hospital care.

(2) An individual under sub. (3) may consent to admission, directly from a hospital to a facility, of an incapacitated individual who does not have a valid power of attorney for health care and who has not been adjudicated incompetent under ch. 880, if all of the following apply:

(a) No person who is listed under sub. (3) in the same order of priority as, or higher in priority than, the individual who is consenting to the proposed admission disagrees with the proposed admission.

(am) 1. Except as provided in subd. 2., no person who is listed under sub. (3) and who resides with the incapacitated individual disagrees with the proposed admission.

2. Subdivision 1. does not apply if any of the following applies:

a. The individual who is consenting to the proposed admission resides with the incapacitated individual.

b. The individual who is consenting to the proposed admission is the spouse of the incapacitated person.

(b) The individual for whom admission is sought is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.

(c) A petition for guardianship for the individual under s. 880.07 and a petition for protective placement of the individual under s. 55.06 (2) are filed prior to the proposed admission.

(3) The following individuals, in the following order of priority, may consent to an admission under sub. (2):

(a) The spouse of the incapacitated individual.

(b) An adult son or daughter of the incapacitated individual.

(c) A parent of the incapacitated individual.

(d) An adult brother or sister of the incapacitated individual.

(e) A grandparent of the incapacitated individual.

(f) An adult grandchild of the incapacitated individual.

(g) An adult close friend of the incapacitated individual.

(4) A determination that an individual is incapacitated for purposes of sub. (2) shall be made by 2 physicians, as defined in s. 448.01 (5), or by one physician and one licensed psychologist, as defined in s. 455.01 (4), who personally examine the individual and sign a statement specifying that the individual is incapacitated. Mere old age, eccentricity or physical disability, either singly or together, are insufficient to make a finding that an individual is incapacitated. Neither of the individuals who make a finding that an individual is incapacitated may be a relative, as defined in s. 242.01 (11), of the individual or have knowledge that he or she is entitled to or has a claim on any portion of the individual's estate. A copy of the statement shall be included in the individual's records in the facility to which he or she is admitted.

(5) (a) Except as provided in par. (b), an individual who consents to an admission under this section may, for the incapacitated

individual, make health care decisions to the same extent as a guardian of the person may and authorize expenditures related to health care to the same extent as a guardian of the estate may, until the earliest of the following:

1. Sixty days after the admission to the facility of the incapacitated individual.

2. Discharge of the incapacitated individual from the facility.

3. Appointment of a guardian for the incapacitated individual.

(b) An individual who consents to an admission under this section may not authorize expenditures related to health care if the incapacitated individual has an agent under a durable power of attorney, as defined in s. 243.07 (1) (a), who may authorize expenditures related to health care.

(6) If the incapacitated individual is in the facility after 60 days after admission and a guardian has not been appointed, the authority of the person who consented to the admission to make decisions and, if sub. (5) (a) applies, to authorize expenditures is extended for 30 days for the purpose of allowing the facility to initiate discharge planning for the incapacitated individual.

(7) An individual who consents to an admission under this section may request that an assessment be conducted for the incapacitated individual under the long–term support community options program under s. 46.27 (6) or, if the secretary has certified under s. 46.281 (3) that a resource center is available for the individual, a functional and financial screen to determine eligibility for the family care benefit under s. 46.286 (1). If admission is sought on behalf of the incapacitated individual or if the incapacitated individual is about to be admitted on a private pay basis, the individual who consents to the admission may waive the requirement for a financial screen under s. 46.283 (4) (g), unless the incapacitated individual is expected to become eligible for medical assistance within 6 months.

History: 1993 a. 187; 1999 a. 9.

50.065 Criminal history and patient abuse record search. (1) In this section:

(ag) 1. "Caregiver" means any of the following:

a. A person who is, or is expected to be, an employee or contractor of an entity, who is or is expected to be under the control of an entity, as defined by the department by rule, and who has, or is expected to have, regular, direct contact with clients of the entity.

b. A person who has, or is seeking, a license, certification, registration, or certificate of approval issued or granted by the department to operate an entity.

c. A person who is, or is expected to be, an employee of the board on aging and long–term care and who has, or is expected to have, regular, direct contact with clients.

2. "Caregiver" does not include a person who is certified as an emergency medical technician under s. 146.50 if the person is employed, or seeking employment, as an emergency medical technician and does not include a person who is certified as a first responder under s. 146.50 if the person is employed, or seeking employment, as a first responder.

(am) "Certificate of approval" means a certificate of approval issued under s. 50.35.

(b) "Client" means a person who receives direct care or treatment services from an entity.

(bm) "Contractor" means, with respect to an entity, a person, or that person's agent, who provides services to the entity under an express or implied contract or subcontract, including a person who has staff privileges at the entity.

(br) "Direct contact" means face–to–face physical proximity to a client that affords the opportunity to commit abuse or neglect of a client or to misappropriate the property of a client.

(c) "Entity" means a facility, organization or service that is licensed or certified by or registered with the department to provide direct care or treatment services to clients. "Entity" includes a hospital, a personal care worker agency, a supportive home care service agency, a temporary employment agency that provides caregivers to another entity and the board on aging and long–term care. "Entity" does not include any of the following:

1. Licensed or certified child care under ch. 48.

2. Kinship care under s. 48.57 (3m) or long–term kinship care under s. 48.57 (3n).

3. A person certified as a medical assistance provider, as defined in s. 49.43 (10), who is not otherwise approved under s. 50.065 (1) (cm), licensed or certified by or registered with the department.

4. An entity, as defined in s. 48.685 (1) (b).

6. A public health dispensary established under s. 252.10.

(cm) "Hospital" means a facility approved as a hospital under s. 50.35.

(cn) "Nonclient resident" means a person who resides, or is expected to reside, at an entity, who is not a client of the entity and who has, or is expected to have, regular, direct contact with clients of the entity.

(d) "Personal care worker agency" has the meaning specified by the department by rule.

(dm) "Reservation" means land in this state within the boundaries of a reservation of a tribe or within the bureau of Indian affairs service area for the Ho–Chunk Nation.

(e) 1. "Serious crime" means a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (3), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 948.02 (1), 948.025 or 948.03 (2) (a), or a violation of the law of any other state or United States jurisdiction that would be a violation of s. 940.01, 940.02, 940.03, 940.05, 940.12, 940.19 (2), (3), (4), (5) or (6), 940.22 (2) or (3), 940.225 (1), (2) or (3), 940.285 (2), 940.29, 940.295, 948.02 (1), 948.025 or 948.03 (2) (a) if committed in this state.

2. For the purposes of an entity that serves persons under the age of 18, "serious crime" includes a violation of s. 948.02 (2), 948.03 (2) (b) or (c), 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) or 948.30 or a violation of the law of any other state or United States jurisdiction that would be a violation of s. 948.02 (2), 948.03 (2) (b) or (c), 948.05, 948.055, 948.06, 948.07, 948.08, 948.11 (2) (a) or (am), 948.12, 948.13, 948.21 (1) or 948.30 if committed in this state.

(f) "Supportive home care service agency" has the meaning specified by the department by rule.

(g) "Tribe" means a federally recognized American Indian tribe or band in this state.

(2) (am) The department shall obtain all of the following with respect to a person specified under sub. (1) (ag) 1. b. and a person who is a nonclient resident or prospective nonclient resident of an entity:

1. A criminal history search from the records maintained by the department of justice.

2. Information that is contained in the registry under s. 146.40 (4g) regarding any findings against the person.

3. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, if applicable.

4. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person.

5. Information maintained by the department under this section regarding any denial to the person of a license, certification, certificate of approval or registration or of a continuation of a license, certification, certificate of approval or registration to operate an entity for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, certification, certificate of approval or registration, continuation of a license, certification, certificate of approval or registration, a con-

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